

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 151

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GEORGE SCHUERMAN, D. E. DUMAS, AND J. R. BEATSON,  
APPELLANTS,

*vs.*

THE TERRITORY OF ARIZONA.

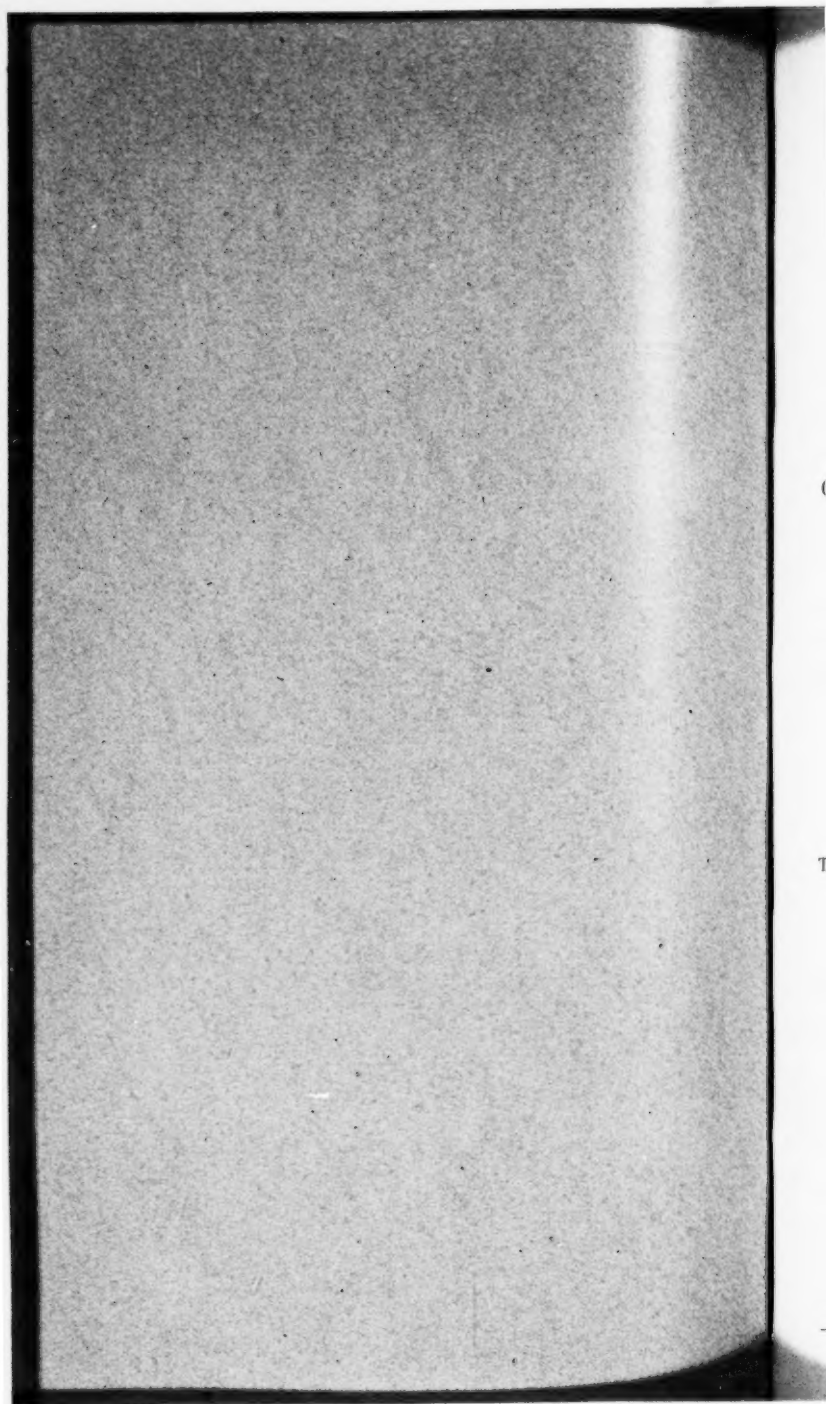
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APPEAL FROM THE TERRITORY OF ARIZONA.

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FILED SEPTEMBER 1, 1900.

(17,894.)



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1 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

VS.

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

The plaintiff in the above-entitled action, by Charles F. Ainsworth, its attorney general, complains of the above-named defendants, and alleges :

### I.

That said defendants are now, and were during all the times hereinafter mentioned, the duly elected, qualified and acting supervisors of the county of Yavapai, in said Territory of Arizona, and as such constitute the board of supervisors for said county, and that their place of residence is in the county of Yavapai aforesaid.

### II.

That heretofore, to wit, on and prior to the 17th day of September, 1897, the said county of Yavapai was indebted to various and divers persons on certain Yavapai County railroad subsidy bonds theretofore issued by said county of Yavapai prior to January 1st, 1890, which said bonds were in the hands of innocent purchasers for value, and were legal obligations against the  
2 county of Yavapai, amounting on the said 17th day of September, 1897, principal and interest thereon, according to the terms of said bonds, to the sum of \$260,218.80.

### III.

That on said 17th day of September, 1897, the loan commission of the Territory of Arizona, upon the request of the owners of said railroad subsidy bonds aforesaid, duly and legally funded said railroad subsidy bonds of said county of Yavapai, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000, and each bearing interest at the rate of five per cent. per annum, interest payable semi-annually on the 15th days of January and July thereafter until paid, and in addition thereto, the said loan commission paid out in cash the sum of \$2,218.80, thereby funding 203 of said railroad subsidy bonds aforesaid, then outstanding against the county of Yavapai, each of said bonds so funded as aforesaid being of the denomination of \$1,000, and having attached thereto coupons for the accrued interest thereon.

### IV.

That by reason of such funding of said bonds as aforesaid and the issuance of 258 territorial funding bonds of said Territory of Arizona, there became due and payable thereon, according to the tenor thereof, on January 15, 1898, the sum of \$4,288.33, and that there-

3 after, on the 15th day of January and July in each year subsequent thereto, there became due and payable to the holders of said bonds for interest thereon, according to the terms and conditions thereof, the sum of \$6,450, payable at the office of the territorial treasurer of the Territory of Arizona.

## V.

That in compliance with the terms and conditions of said funding bonds so issued as aforesaid the said territorial treasurer of the Territory of Arizona has duly paid all of the interest due thereon at the times and when the same have become due and payable, according to the terms and conditions thereof, amounting in all at the present time to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds aforesaid to that extent and for that amount.

## VI.

That upon the issuance of said territorial funding bonds aforesaid it became and was the duty of the board of supervisors of the county of Yavapai to levy annually upon the taxable property in said county sufficient tax to pay the annual interest on said bonds so issued by the Territory as aforesaid.

## VII.

4 That for the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, duly levied, as plaintiff is informed and verily believes to be true, the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the interest on the funding bonds heretofore mentioned maturing in the year 1898 and 1899, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai for the purpose of having said county board of supervisors levy said tax and include it in the tax-roll for that year; that thereupon these defendants, comprising the board of supervisors of said county of Yavapai, unlawfully and wrongfully refused and neglected to levy said tax of thirty-nine cents on each one hundred dollars valuation on the property in said county of Yavapai to pay said interest aforesaid, but only levied the sum of seven cents on the hundred dollars of valuation of said county, which was insufficient to pay the interest on the funded indebtedness of said county of Yavapai, and wholly inadequate and insufficient to pay the interest on any portion of the funding bonds heretofore described.

## VIII.

That for the year 1899 the territorial board of equalization, at its annual session, duly levied thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai,

for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the funding  
5 bonds aforesaid maturing in the year 1900, and the territorial auditor of said Territory of Arizona duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that thereupon the defendants, comprising the board of supervisors of said county of Yavapai, unlawfully and wrongfully refused and still refuse to levy said tax of thirty-seven cents on each one hundred dollars of valuation of the taxable property of said county of Yavapai, to pay said interest as aforesaid, and as plaintiff is informed and verily believes, said county board of supervisors will not levy the tax aforesaid to pay said interest, unless compelled to by the mandatory writ of this court; that said defendants give out and claim that they do not intend and will not levy the tax for the purpose of paying the interest on the funding bonds hereinbefore mentioned.

## IX.

Plaintiff herein further alleges that it became and was the duty of said board of supervisors of Yavapai county to levy the tax of thirty-nine cents on each one hundred dollars for the year 1898, for the purpose of paying interest on said bonds so funded as aforesaid; and that it was the plain duty of the defendants, The Supervisors of the County of Yavapai, to levy said tax of thirty-seven cents on each one hundred dollars of valuation upon property in said county of Yavapai, to pay the interest on the funded indebtedness aforesaid  
6 maturing in the year 1900; and that said board of supervisors should this year levy a tax of thirty-two cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the years 1898 and 1899, and should also levy the further tax of thirty-seven cents on each one hundred dollars of valuation to pay the interest on the funding bonds aforesaid maturing in the year 1900.

## X.

Plaintiff alleges that it has no plain, speedy and adequate remedy in the ordinary course of law; that it is the party beneficially interested in the payment of this interest to the Territory of Arizona.

Wherefore, plaintiff prays that a writ of mandate issue out of this honorable court directed to the said defendants and each of them, directing and commanding them to forthwith convene as a board of supervisors, and to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the years 1898 and 1899; and also to levy and assess upon the taxable property in the county of Yavapai the further sum of thirty-seven cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the year 1900; and for costs

7 of this suit; and for such other and further relief as to the court may seem meet and just in the premises.

TERRITORY OF ARIZONA,  
By CHARLES F. AINSWORTH,  
*Its Attorney General.*

TERRITORY OF ARIZONA, {  
*County of Maricopa,* } ss:

Charles F. Ainsworth, being first duly sworn on oath, says that he is the attorney general of the Territory of Arizona; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, that he believes it to be true.

CHARLES F. AINSWORTH.

Subscribed and sworn to before me this 1st day of September, A. D. 1899.

[NOTARY SEAL.]

THOS. D. BENNETT,  
*Notary Public.*

My commission expires Sept 13, 1899.

Let an alternative writ of mandamus issue, returnable before the district court of the fourth judicial district of the Territory of Arizona, at the court-house in the city of Prescott, county of Yavapai, Territory of Arizona, on the thirteenth (13th) day of September, 1899, at the hour of 10 o'clock a. m.

RICHARD E. SLOAN, *Judge.*

(Endorsed :) 3079. District court fourth judicial district, county of Yavapai, Territory of Arizona. Territory of Arizona, plaintiff, vs. George Sherman, *et al.* defendants. Complaint. Original. Filed at 10:30 o'clock a. m. Sep. 2 1899, J. M. Watts, clerk.

8 OFFICE OF THE SHERIFF OF YAVAPAI COUNTY, {  
*Arizona,* } ss:

I hereby certify that I received the within writ of mandate on the 2nd day of September, 1899, and personally served the same on the 5th day of September, 1899, on George Sherman, D. E. Dumas, and J. R. Beatson, defendants, being the defendants named in said writ of mandate, by delivering to said defendants personally in the county of Yavapai, Arizona, a true copy of said writ of mandate.

Dated Prescott, Arizona, September 5th, 1899.

J. L. MUNDS, *Sheriff.*

A. J. DAVIS, *Deputy.*

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

Territory of Arizona to George Sherman, D. E. Dumas, and J. R. Beatson, supervisors of the county of Yavapai, Arizona, Greeting:

Whereas, it manifestly appears to the court by the affidavit of Charles F. Ainsworth, attorney general of the Territory of Arizona, on the part of said Territory of Arizona, the plaintiff, and the party beneficially interested herein, that the defendants George Sherman,

9 D. E. Dumas, and J. R. Beatson, are the supervisors of the county of Yavapai, and constitute such board of supervisors, and that heretofore, to wit, on the 17th day of September, 1897, said county of Yavapai, then being indebted to various and divers persons on certain railroad subsidy bonds theretofore issued by the said county of Yavapai, prior to January 1st, 1890, amounting on said 17th day of September, 1897, to the sum of \$260,218.80, and that the owners and holders of said bonds, on the 17th day of September, 1897, applied to the loan commission of the Territory of Arizona to have said bonds aforesaid of the county of Yavapai funded, and that on said 17th day of September, 1897, said loan commissioners of the Territory of Arizona duly funded 203 of the aforesaid outstanding bonds of said Yavapai county, each of the denomination of \$1,000, with the accrued interest thereon, amounting at that date to \$260,218.80, by then and there delivering to the owners and holders of the aforesaid bonds 258 territorial funding bonds of the Territory of Arizona of the denomination of \$1,000 each, and bearing interest at the rate of five per cent. per annum, payable semi-annually on the 15th days of January and July of each year thereafter until paid, and paid out in cash to said owners and holders of said bonds, in addition thereto, the sum of \$2,218.80; that by reason of the funding of said debt as aforesaid and the issuing of said funding bonds by the territorial loan commission, the said county of Yavapai became obligated to pay the interest due on said funding bonds aforesaid, according to the tenor thereof on the 15th days of January and

10 July in each year thereafter, and that said county of Yavapai became obligated to pay on the 15th day of January, 1898, the interest due on said funding bonds aforesaid the sum of \$4,288.33, and on July 15th and January 15th in each year thereafter the sum of \$6,450, which amounts it became the duty of the taxing officers of said county of Yavapai to levy and collect and pay over to the territorial treasurer of the Territory of Arizona; that for the year 1898 the territorial board of equalization, at its annual session thereof, duly levied thirty-nine cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on said funding bonds of said

county of Yavapai including interest on said 258 funding bonds aforesaid maturing in the years 1898 and 1899, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that said defendants, then and now constituting the board of supervisors of said county, wrongfully and unlawfully refused and neglected to levy said tax of thirty-nine cents on each one hundred dollars of valuation of property in said county of Yavapai to pay said interest on said 258 funding bonds aforesaid, but only levied the sum of seven cents on each one hundred dollars of valuation of said county, which amount so levied as aforesaid was insufficient to pay the interest on the funded indebtedness of said county of Yavapai, and wholly inadequate and insufficient

11 to pay the interest, or any portion thereof, on said 258 funding bonds aforesaid; that for the year 1899, the territorial board of equalization of the Territory of Arizona, at its annual session thereof, duly levied thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the interest on the 258 funding bonds aforesaid maturing in the year 1900, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that thereupon these defendant, then and now comprising the board of supervisors of said county of Yavapai, wrongfully and unlawfully refused and neglected to levy said tax of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on said funding bonds aforesaid; that all of the interest due on said 258 funding bonds aforesaid has been duly paid by the territorial treasurer of the Territory of Arizona as the same became due and payable, and that said territorial treasurer has up to the present time paid for interest due on said funding bonds aforesaid as the same became due and payable the sum of \$23,638.33, and that there is now due and owing to said Territory from the county

of Yavapai for interest due on said funding bonds aforesaid  
12 said sum of \$23,638.33; that it is the plain duty of the board of supervisors of said county of Yavapai to levy and assess upon the taxable property of said county of Yavapai a tax sufficient to pay said interest due from said county to said Territory as aforesaid.

That it appears from said affidavit that the amount of thirty-two cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai should be levied for the purpose of paying the interest due on said funding bonds aforesaid maturing in the years 1898 and 1899, and that there should be levied and assessed upon the taxable property of the county of Yavapai the sum of thirty-seven cents on each one hundred dollars of valuation, for the purpose of paying interest due on the funded indebtedness of said county of Yavapai, including the 258 bonds aforesaid, to pay said interest maturing in the year 1900; and that

said board of supervisors refused and still refuses to levy said tax upon the taxable property in the county of Yavapai.

That plaintiff has no plain, speedy and adequate remedy in the ordinary course of law.

Therefore, we do command you that immediately after the receipt of this writ you do forthwith convene as a board of supervisors and levy and assess upon all of the taxable property in the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation thereof, for the purpose of paying

13 the interest due on said 258 territorial funding bonds aforesaid maturing in the years 1898 and 1899, and that you duly certify said levy to the county treasurer of the county of Yavapai; and that you also levy and assess upon the taxable property in the county of Yavapai the further sum of thirty-seven cents on each one hundred dollars of valuation thereof, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the 258 funding bonds aforesaid maturing thereon in the year 1900, and that you duly certify such levy to the county treasurer of the county of Yavapai; or that you show cause before this court at the court-house thereof in the city of Prescott, county of Yavapai, Arizona, on the 13th day of September, 1899, at the hour of 10 o'clock a. m., why you have not done so.

Witness the Hon. R. E. Sloan, judge of said court at the court-house in the city of Prescott, county of Yavapai, Arizona, and the seal of said court, this 2d day of September, A. D. 1899.

J. M. WATTS,

*Clerk of said Court.*

[COURT SEAL.]

(Endorsed :) Office of the sheriff of Yavapai county, Arizona. Received Sept'r 2nd, 1899, at 2 o'clock p. m. J. L. Munds, sheriff, by A. A. Johns, under sheriff. 3079. In the district court, fourth judicial district, county of Yavapai, Territory of Arizona. Territory of Arizona, plaintiff, *vs.* George Sherman, *et al.*, defendants. Writ of mandate. Original. Filed Sept. 5th, 1899, at 10 o'clock a. m. J. M. Watts, clerk.

14 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

*vs.*

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

*Answer.*

Come now the above-named defendants and for answer to the complaint herein filed, and for return to the alternative writ of mandate, demur to the said complaint for the reason that said complaint does not state facts sufficient to constitute a cause of action, nor does said complaint state facts sufficient to enable this court to grant the relief prayed for in said complaint or any other relief.

Wherefore defendants pray judgment as to the sufficiency of said complaint.

REESE M. LING,  
*District Attorney of Yavapai County,*  
*Attorney for Defendants.*

The said defendants further answering said complaint, demur specially thereto for the reason that it appears upon the face of said complaint that the bonds referred to in said complaint were funded after January 1st, 1897.

Wherefore defendants pray judgment as to the sufficiency  
15 of said complaint.

REESE M. LING,  
*District Attorney of Yavapai County,*  
*Attorney for Defendants.*

1. And for further answer to said complaint and return to said alternative writ of mandate, these defendants admit that they are and during the year 1899 have been the duly elected, qualified and acting supervisors of the county of Yavapai, and that their place of residence is in said county of Yavapai.

2. These defendants admit that prior to the month of September 1897 certain instruments in writing purporting to be railroad subsidy bonds had been issued, but these defendants deny that said bonds were at any time in the hands of innocent purchasers for value, and expressly deny that said bonds were legal obligations against said county of Yavapai, but aver that said bonds and all thereof were absolutely null and void.

3. And further answering these defendants aver that they have no knowledge of the alleged funding of the bonds mentioned in said complaint and therefore deny the same, and deny each and all the allegations contained in paragraph III of said complaint.

4. These defendants further allege that no demand was ever made by the board of supervisors of Yavapai county upon the said board of loan commissioners of the Territory of Arizona for the funding of the bonds mentioned in said complaint, and that no notice was ever given said board of supervisors of the funding of said bonds.

16 5. Defendants further allege that said pretended funding was not the act of said board of loan commissioners; that at the time of said pretended funding only two members of said board of loan commissioners were present, and that the other member of said board was absent from the Territory of Arizona and took no part in the said pretended funding and was not consulted with reference thereto; that the said pretended funding was without authority of law, and that the said pretended funding was the free and voluntary assumption of the said bonds and the debt which the same represented and the payment thereof upon the part of the Territory of Arizona, and for which said county of Yavapai is in no way or manner responsible.

6. And further answering defendants allege that said pretended



funding took place after January 1st, 1897, and was and is contrary to law.

7. And further answering these defendants allege that said plaintiff has a plain, speedy and adequate remedy at law.

Wherefore defendants pray judgment that this proceeding be dismissed and that plaintiff have no relief herein, and for such other and further relief as the court may deem just and proper, with their costs.

REESE M. LING,  
*District Attorney of Yavapai County,*  
*Attorney for Defendants.*

TERRITORY OF ARIZONA, }  
*County of Yavapai,* } 88 :

17 Reese M. Ling being duly sworn deposes and says; that he is the district attorney of Yavapai county, Arizona, and is the attorney for the defendants in the foregoing-entitled proceedings, that he has read the foregoing answer and return and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

REESE M. LING.

Subscribed and sworn to before me this 13th day of September, 1899.

J. H. ROBINSON,  
*Notary Public.*

[NOTARY SEAL.]

My commission expires Jan. 5, 1901.

(Endorsed :) 3079. In the district court of Territory of Arizona in and for county of Yavapai. Territory of Arizona pl'ff vs. Geo. Sherman *et al.* def'ts. Answer. Filed at 10 o'clock a. m. Sept. 13th 1899. J. M. Watts, clerk. By Wm. Wilkerson deputy.

18 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,  
vs.  
GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding that the same may be submitted to the court for decision upon the following agreed statement of facts, together with the pleadings in this action, to wit:

1. The defendants are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai, in the Territory of Arizona.

2. Prior to the 17th day of September 1897 there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. Railroad bonds, upon which there was due according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80;

said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January 1897.

3. On the 18th day of November 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. On the 17th day of September 1897 the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix, and funded said bonds issued by said Yavapai county, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent. per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took — part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th 1898 there became due and payable as interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona, has paid all the interest thereon at the times when the same became due and payable, amounting in all at the date hereof to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county including the funding bonds hereinafter mentioned and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine

cents and include the same in the tax-roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county. That said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. Railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. Railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county, that the defendants, comprising the board of supervisors of said county, failed

and neglected to levy said tax of thirty-seven cents on the hundred dollars, but only levied the sum of six cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. Railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. Railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That the said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898, was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county

23 was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

C. F. AINSWORTH.

*Attorney General,*

By THOS. D. BENNETT,

*Assistant Att'y General.*

REESE M. LING,

*District Attorney, Yavapai County, Ariz., Attorney for Def'ts.*

(Endorsed:) No. 3079. The Territory vs. George Sherman *et al.*,  
agreed statement of facts. Filed at 10 o'clock a. m. Sept. 14th, 1899.  
J. M. Watts, clerk. By Wm. Wilkerson deputy.

In the District Court of the Fourth Judicial District of the Territory  
of Arizona in and for the County of Yavapai.

TERRITORY OF ARIZONA, Plaintiff,

158

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEAT-  
son, Defendants.

} Judgment.

This cause came on regularly for trial before the court, jury having — waived by both parties hereto, plaintiff appearing by Thomas D. Bennett, assistant attorney general, and defendants appearing by Reese M. Ling, district attorney of Yavapai county, and both parties hereto having submitted the case on an agreed statement of facts together with the pleadings in this action, and the court  
24 having considered the same and being fully advised in and concerning the premises doth find.

That the statement of facts filed in this case is substantially true and correct and is hereby adopted as the findings of fact in this case, and further the court finds that all the material allegations of the complaint are true.

As conclusions of law, the court finds that those certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott and Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai, Territory of Arizona.

That the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof, was in all respects authorized and legal.

That said bonds as funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the said county of Yavapai is liable for the same and for all the interest accruing on said bonds to be paid by taxation of all taxable property in said county of Yavapai to be levied and assessed by the board of supervisors acting as a board of equalization for said county, to be collected in the same manner as other taxes

are collected, and by the treasurer of said county of Yavapai to be paid over to the territorial treasurer.

25 That the sum of 32 cents on each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accruing interest on the aforesaid bonds for the year 1898, and the sum of 31 cents for each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accrued interest in the bonds aforesaid by taxation for the year 1899, the court finds that the defendants herein are legally bound to levy and assess the said sum on all the taxable property in Yavapai county.

Wherefore, by reason of the law and the facts, it is considered, ordered and adjudged that it is the plain duty of the defendants herein comprising the board of supervisors of Yavapai county, Arizona Territory, to levy and assess upon the taxable property of said county in addition to all other levies and assessments made for taxes of said county, the sum of 32 cents on each one hundred dollars of valuation of taxable property in said county of Yavapai for the purpose of paying the interest due on the funding bonds aforesaid maturing in the years 1898 and 1899, and to levy and assess upon the taxable property of the county of Yavapai the sum of 37 cents on each one hundred dollars of valuation for the purpose of paying the interest due on the funded indebtedness of said county of Yavapai, including the two hundred fifty-eight bonds aforesaid maturing in the year 1900.

26 It is further adjudged that the defendants have failed to show sufficient cause to this court why said levy and assessment should not be made and the alternative writ of mandate issued on the second day of September, 1899, is hereby made final. The defendants are hereby commanded to forthwith convene as a board of supervisors and to levy and assess upon all the taxable property in the county of Yavapai the sum of 32 cents on each one hundred — valuation of the property in said county for the purpose of paying the interest due on said two hundred fifty-eight funding bonds maturing in the years 1898 and 1899, and to certify said levy to the county treasurer of Yavapai county.

Defendants are further commanded to forthwith levy and assess upon the taxable property of the county of Yavapai the further sum of 37 cents including the sum of six cents already levied on each one hundred dollars of valuation therein for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the two hundred fifty-eight funding bonds aforesaid maturing in the year 1900, and to certify such levy to the county treasurer of the county of Yavapai.

It is further adjudged that the plaintiff do have and recover of defendant its costs and disbursements herein taxed and allowed at the sum of twenty-seven dollars.

Done in open court this 14th day of September, 1899.

By the court:

RICHARD E. SLOAN, *Judge.*

27 (Endorsed :) 3079. District court, Yavapai county, Territory of Arizona. Territory of Ariz. vs. Geo. Schuerman *et al.* Board of supervisors. Judgment. Filed at 10 o'clock a. m. Sep. 15, 1899, J. M. Watts clerk.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

|   |   |
|---|---|
| THE TERRITORY OF ARIZONA, Plaintiff,                          | } |
| <i>vs.</i>  |   |
| GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. |   |

*Motion for New Trial.*

Come now the above-named defendants and move the court to set aside the decision and judgment of said court entered herein on the 14th day of September, 1899, and for a new trial of the above-entitled cause, upon the following grounds:

1. That the said judgment and decision are contrary to law.
2. That the court erred in ordering judgment for the plaintiff upon the agreed statement of facts.
3. That the court erred in not entering judgment for the defendants upon the agreed statement of facts.

REESE M. LING,  
*Attorney for Defendants.*

(Endorsed :) District court, Yavapai county Territory of Arizona. Territory vs. Geo. Schuerman *et al.* Board of supervisors. Motion for new trial. Filed at 10 o'clock a. m. Sep. 14, 1899. J. M. Watts, clerk.

28 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

|   |   |
|---|---|
| THE TERRITORY OF ARIZONA, Plaintiff,                        | } |
| <i>vs.</i>  |   |
| GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. |   |

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding that the same may be submitted to the court for decision upon the following agreed statement of facts, together with the pleadings in this action, to wit:

1. The defendants are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai, in the Territory of Arizona.
2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. Railroad bonds, upon which there was due according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January 1897.

29 3. On the 18th day of November 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September 1897.

4. On the 17th day of September 1897 the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix, and funded said bonds issued by said Yavapai county, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent. per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as  
30 interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona, has paid all the interest thereon at the times when the same became due and payable, amounting in — at the date hereof to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax-roll for that year, but only levied  
31 the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county. That said sum of seven

cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. Railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. Railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid, maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars, but only levied the sum of six cents on the hundred

32 dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. Railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. Railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to be levied in order to pay the interest due on said bonds for the

33 year 1899.

C. F. AINSWORTH,

*Attorney General,*

By THOS. D. BENNETT,

*Assistant Atty General.*

REESE M. LING,

*District Attorney, Yavapai County, Ariz., Attorney for Def'ts.*



(Endorsed :) No. 3079. In the district court 4th judicial district county of Yavapai, Territory of Arizona. Territory of Arizona plaintiff, *vs.* George Schuerman *et al.*, defendants. Statement of facts. Filed at 3 o'clock p. m. Oct. 13, 1899. J. M. Watts, clerk.

- 34 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

*vs.*

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

Come now the above-named defendants and apply to the above-named court for an order fixing the amount of the bond to be given by said defendants upon the appeal taken by them from the judgment of this court entered on the 14th day of September, 1899, in order to stay all proceedings upon said judgment until the determination of said appeal, and also for an order staying proceedings on said judgment for a reasonable time to enable defendants to give such bond.

REESE M. LING,  
*Attorney for Defendants.*

(Endorsed :) No. 3079. Territory *vs.* Geo. H. Scheurman, *et als.* Motion for supersedeas. Filed at 10 a. m. Sept. 16th, 1899. J. M. Watts clerk. By Wm. Wilkerson, dep'y.

- 35 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

*vs.*

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Defendants. } Bond on Appeal.

Whereas George Schuerman, D. E. Dumas, and J. R. Beatson, the defendants in the above-entitled action, have appealed to the supreme court of the Territory of Arizona, from a judgment made and entered against them in the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, on the 14th day of September 1899, by the terms of which judgment said defendants are commanded and required to forthwith convene as a board of supervisors of said Yavapai county, and to levy and assess upon all the taxable property in said county of Yavapai the sum of 32 cents on each one hundred dollars' valuation of the property in said county for the purpose of paying the interest due on two hundred and fifty-eight funding bonds, mentioned in said judgment, maturing in the years 1898 and 1899, and to certify said levy to the county treasurer of Yavapai county, and in and by which judgment said defendants are further commanded to levy and assess upon the taxable property of the county of Yavapai the further sum

of 37 cents, including the sum of six cents already levied,  
 36 on each one hundred dollars of valuation therein, for the  
 purpose of paying the interest on the funded indebtedness of  
 said county of Yavapai, including the two hundred and fifty-eight  
 funding bonds aforesaid, maturing in the year 1900, and to certify  
 such levy to the county treasurer of the county of Yavapai, and for  
 the sum of twenty-seven dollars, costs of said action :

Now therefore, in consideration of the premises, and of such ap-  
 peal, we George Schuerman, D. E. Dumas and J. R. Beatson, as  
 principals, and Samuel Hill, N. Levy, M. J. Hickey, Joseph Dough-  
 erty, A. J. Head, J. W. Wilson, William Munds, J. I. Gardner, W. T.  
 Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W. Wells,  
 T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry Brink-  
 meyer, Jake Marks, R. H. Burmister, Harry Brisley and J. N. Mc-  
 Candless, all of the county of Yavapai and Territory of Arizona, as  
 sureties, do hereby jointly and severally undertake and promise, on  
 the part of the appellants, that the said appellants will prosecute  
 their appeal with effect, and will pay all costs which have accrued  
 in the said district court or which may accrue in the appellate court,  
 not exceeding the sum of two hundred dollars, to which amount we  
 acknowledge ourselves jointly and severally bound.

And whereas, the said appellants are desirous of staying the exe-  
 cution of the said judgment so appealed from, we, the said George  
 Schuerman, D. E. Dumas and J. R. Beatson, as principals, and  
 Samuel Hill, N. Levy, M. J. Hickey, Joseph Dougherty, A. J.  
 37 Head, J. W. Wilson, William Munds, J. I. Gardner, W. T.  
 Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W.  
 Wells, T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry  
 Brinkmeyer, Jake Marks, R. H. Burmister, Harry Brisley and J. N.  
 McCandless, as sureties, all of the county of Yavapai and Territory  
 of Arizona, do further, in consideration thereof and of the premises,  
 jointly and severally undertake and promise, and do acknowledge  
 ourselves further jointly and severally bound in the further sum of  
 seven thousand five hundred dollars (being the amount for that pur-  
 pose fixed by said district court), that the said appellants will pay  
 to the Territory of Arizona all damages which the said Territory of  
 Arizona may sustain by the not levying the taxes directed by said  
 judgment and hereinbefore mentioned and certifying the same to  
 the county treasurer of said Yavapai county, and the not doing the  
 acts and things directed to be done by the said judgment from which  
 said appeal is taken, each of said sureties being bound in the sum  
 set opposite his name below and separate in no larger sum than, to  
 wit :

|                       |            |
|-----------------------|------------|
| Samuel Hill.....      | \$1,000.00 |
| N. Levy.....          | 500.00     |
| M. J. Hickey.....     | 1,000.00   |
| Joseph Dougherty..... | 1,000.00   |
| A. J. Head.....       | 1,000.00   |
| J. W. Wilson.....     | 1,000.00   |
| William Munds.....    | 1,000.00   |

|    |                       |          |
|----|-----------------------|----------|
| 38 | J. I. Gardner.....    | 1,000.00 |
|    | W. T. Brown.....      | 1,000.00 |
|    | H. H. Cartter.....    | 1,000.00 |
|    | F. G. Brecht.....     | 1,000.00 |
|    | R. N. Fredericks..... | 1,000.00 |
|    | Ed. W. Wells.....     | 1,000.00 |
|    | T. W. Otis.....       | 1,000.00 |
|    | Morris Goldwater..... | 1,000.00 |
|    | E. Block.....         | 1,000.00 |
|    | Chas. A. Dake.....    | 1,000.00 |
|    | Henry Brinkmeyer..... | 1,000.00 |
|    | Jake Marks.....       | 1,000.00 |
|    | R. H. Burmister.....  | 1,000.00 |
|    | Harry Brisley.....    | 1,000.00 |
|    | J. N. McCandless..... | 500.00   |

In witness whereof we have hereunto set our hands this 25 day of September, 1899.

G. H. SCHUERMAN.  
D. E. DUMAS.  
J. R. BEATSON.  
SAM'L HILL.  
N. LEVY.  
M. J. HICKEY.  
JOSEPH DOUGHERTY.  
A. J. HEAD.  
J. W. WILSON.  
WM. MUNDS.  
J. I. GARDNER.  
W. T. BROWN.  
H. H. CARTTER.  
F. G. BRECHT.  
R. N. FREDERICKS.  
ED. W. WELLS.  
T. W. OTIS.  
MORRIS GOLDWATER.  
E. BLOCK.  
CHAS. A. DAKE.  
HENRY BRINKMEYER.  
JAKE MARKS.  
R. H. BURMISTER.  
HARRY BRISLEY.  
J. N. McCANDLESS.

TERRITORY OF ARIZONA, } ss:  
County of Yavapai, }

Samuel Hill, N. Levy, M. J. Hickey, Joseph Dougherty, A. J. Head, J. W. Wilson, William Munds, J. I. Gardner, W. T. Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W. Wells, T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry Brinkmeyer, Jake Marks, R. H. Burmister, Harry Brisley, and J. N. McCandless,

being duly sworn, doth each for himself, depose and say; that he is one of the sureties named in and who signed the foregoing instrument; that he is a resident of the county of Yavapai and Territory of Arizona, and is worth the amount for which he has signed the foregoing undertaking, and set opposite his name below, over and above his just debts and liabilities exclusive of property exempt from execution.

|                          |            |
|--------------------------|------------|
| Samuel Hill.....         | \$1,000.00 |
| N. Levy.....             | 500.00     |
| Joseph Dougherty.....    | 1,000.00   |
| A. J. Head.....          | 1,000.00   |
| J. W. Wilson.....        | 1,000.00   |
| J. I. Gardner.....       | 1,000.00   |
| W. T. Brown.....         | 1,000.00   |
| H. H. Cartter.....       | 1,000.00   |
| F. G. Brecht.....        | 1,000.00   |
| R. N. Fredericks.....    | 1,000.00   |
| Ed. W. Wells.....        | 1,000.00   |
| T. W. Otis.....          | 1,000.00   |
| Morris Goldwater .....   | 1,000.00   |
| E. Block.....            | 1,000.00   |
| Chas. A. Dake.....       | 1,000.00   |
| Henry Brinkmeyer.....    | 1,000.00   |
| Jake Marks.....          | 1,000.00   |
| R. H. Burmister.....     | 1,000.00   |
| Harry Brisley.....       | 1,000.00   |
| William Munds.....       | 1,000.00   |
| 41 J. N. McCandless..... | 500.00     |
| M. J. Hickey.....        | 1,000.00   |

(Signed)

HARRY BRISLEY.  
F. G. BRECHT.  
R. H. BURMISTER.  
JOSEPH DOUGHERTY.  
SAM'L HILL.  
WM. MUNDS.  
ED. W. WELLS.  
M. J. HICKEY.

A. J. HEAD.  
J. W. WILSON.  
N. LEVY.  
J. I. GARDNER.  
W. T. BROWN.  
H. H. CARTTER.  
HENRY BRINKMEYER.  
R. N. FREDERICKS.  
T. W. OTIS.  
E. BLOCK.  
CHAS. A. DAKE.  
MORRIS GOLDWATER.

Subscribed and sworn to before me this 25th day of September 1899.

J. H. ROBINSON,  
*Notary Public.*

My commission expires Jan. 5, 1901.

[NOTARIAL SEAL.]

(Endorsed :) The within undertaking being in the amount directed by the court, is hereby approved this 25th day of September, 1899. Richard E. Sloan, judge district court. Approved as cost bond and filed September 25th, 1899. J. M. Watts, clerk.

42 TERRITORY OF ARIZONA, } ss:  
County of Yavapai, }

I, J. M. Watts, clerk of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, do hereby certify that the annexed and foregoing is a true and correct copy of the supersedeas bond and undertaking on appeal in the action therein entitled, as appears from the original on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Prescott, in said county and Territory, this 28th day of October 1899.

J. M. WATTS,

*Clerk of said Court.*

[COURT SEAL.]

43 June Term, A. D. 1899. Sept. 14th, 1899, 65 Day.

TERRITORY OF ARIZONA

vs.

GEO. H. SCHUERMAN, D. E. DUMAS, and J. R. BEATSON,  
Supervisors of Yavapai County, Arizona Territory.

No. 3079.

*Application for Peremptory Writ of Mandamus.*

Comes now this matter on for hearing, first; upon the demurrer of defendants on file herein:

The respective parties being present by their counsel, Thos. D. Bennett, ass't attorney general, for plaintiff, and Reese M. Ling, dist. attorney, counsel for defendants.

Defendants' demurrer to the plaintiff's complaint was submitted and overruled, to which ruling of the court defendants by their counsel then and there in open court duly excepted.

Comes now the matter on for hearing upon the complaint and answer on file herein, and respective parties by their counsel come and submit agreed statement of facts on file herein and submit case for decision thereon:

The court finds from the facts that plaintiff is entitled to judgment as prayed for;

Now, upon motion of plaintiff's counsel, it is ordered that judgment be entered for plaintiff and against defendants herein as prayed for; to which ruling of the court rendering judgment for plaintiff, defendants, by their counsel, in open court duly excepted;

44 Defendants' motion for a new trial filed herein is by the court overruled, to which ruling of the court defendants duly excepted.

Come now the defendants by their counsel in open court and give

notice of appeal to the supreme court of the Territory of Arizona from the order of the court for the entry of judgment for plaintiff, from the judgment rendered and entered herein and the order of the court overruling defendants' motion for new trial and from the whole thereof.

June Term, A. D. 1899. Sept. 16th, — Day.

The District Court, Fourth Judicial District of Arizona in and for Yavapai County.

Met at 10 o'clock a. m.

Present: His honor, Richard E. Sloan, judge. Dist. attorney, sheriff, bailiff and clerk.

TERRITORY OF ARIZONA

GEO. H. SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, }  
*vs.* } No. 3079.  
 Supervisors.

Come now the defendants, by their attorney R. M. Ling Esq., and move the court for an order fixing the amount of the bond on appeal herein and also for an order staying proceedings for a reasonable time to enable the defendants to give such bond:

Motion sustained and bond fixed at \$7,500.00 and proceedings stayed.

45 TERRITORY OF ARIZONA, }  
 County of Yavapai, } ss:

I, J. M. Watts, clerk of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, do hereby certify that the foregoing is a full, true and complete transcript of the record and minutes of said court and all proceedings had in the case of The Territory of Arizona, plaintiff, against George H. Schuerman, D. E. Dumas, and J. R. Beatson, defendants, and that the hereto-attached papers are the complete — filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Prescott, in said county and Territory, this 28th day of October, 1899.

[COURT SEAL.]

J. M. WATTS,  
 Clerk of said Court.

46 In the Supreme Court of the Territory of Arizona, October Term, 1899.

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|---|---|--|
| GEORGE SCHUERMAN, D. E. DUMAS,<br>and J. R. Beatson, Appellants,<br><i>vs.</i><br>TERRITORY OF ARIZONA, Appellee. | } | No. 709. Minute Entries,<br>Entered October 30th,<br>1899. |
|---|---|--|

On motion of Mr. R. M. Ling, attorney for the appellants, it is ordered that the appellants be granted 30 days in which to file their brief, and

On motion of the attorney general, it is ordered that the appellee have 20 days after the filing of appellants' brief, in which to file its brief.

*Assignment of Errors.*

(As contained in appellants' brief.)

1st. The court erred in overruling the general demurrer of the defendants to the complaint of the plaintiff.

2nd. The court erred in overruling the special demurrer of the defendants to the plaintiff's complaint.

3rd. The court erred in finding as a conclusion of law that these certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott & Arizona Central railroad, extending from  
47 Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai. (See page 24.)

4th. The court erred in finding as a conclusion of law that the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof was in all respects authorized and valid. (See page 24.)

5th. The court erred in finding as a conclusion of law that said bonds so funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the county of Yavapai is liable for the same and for all the interest accruing on said bonds. (Page 24.)

6th. The court erred in finding as a conclusion of law that the defendants herein are legally bound to levy and assess the sums of 32 cents on each one hundred dollars and 37 cents on each one hundred dollars of valuation of all the taxable property in said Yavapai county. (Page 25.)

7th. The court erred in holding and deciding that the bonds mentioned in the complaint in this action, known as the P. & A. C. Railroad bonds, were legally funded after January 1, 1897, under the provisions of the act of Congress approved June 6, 1896.

8th. The court erred in holding and deciding that no demand for the funding of said bonds by the board of supervisors of Yavapai  
48 county was necessary in order that the same might be legally funded, under the provisions of said act of Congress, approved June 6, 1896.

9th. The court erred in holding and deciding that said P. & A. C. Railroad bonds, mentioned in the complaint herein, were legally funded at the meeting of the board of loan commissioners of the Territory of Arizona, on September 17, 1897, at which only two members of said board were present, the third member of said board not being present or acting, and not being in any manner consulted with reference to said funding.

10th. The court erred in rendering judgment in favor of the plaintiff upon the agreed statement of facts, adopted as the findings of fact.

11th. The court erred in not rendering judgment in favor of the defendants upon the agreed statement of facts, adopted as the findings of fact.

12th. The court erred in overruling defendants' motion for a new trial.

49 In the Supreme Court of the Territory of Arizona.

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| GEORGE SCHUERMAN, D. E. DUMAS, and<br>J. R. Beatson, Appellants,<br><i>vs.</i><br>TERRITORY OF ARIZONA, Appellee. | } | No. 709. Minute Entry,<br>Jan'y 9th, 1900. |
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On motion of Mr. Reese M. Ling it is ordered that the hearing of this cause be set for January 26th.

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| GEORGE SCHUERMAN, D. E. DUMAS, and<br>J. R. Beatson, Appellants,<br><i>vs.</i><br>TERRITORY OF ARIZONA, Appellee. | } | No. 709. Minute Entry,<br>Jan. 26th, 1900. |
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This cause coming on regularly for hearing, was argued by Mr. Reese M. Ling for appellants, and Attorney General C. F. Ainsworth, for appellee, and ordered submitted.

50 In the Supreme Court of the Territory of Arizona.

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| GEORGE SCHUERMAN, D. E. DUMAS,<br>and J. R. Beatson, Appellants,<br><i>vs.</i><br>TERRITORY OF ARIZONA, Appellee. | } | No. 709. Judgment, Rendered<br>March 28th, 1900. |
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This cause having been heretofore submitted and by the court taken under consideration, and the court having considered the same and being fully advised in the premises; it is ordered that the judgment of the district court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellee herein do have and recover of and from the appellants herein and Samuel Hill; N. Levy; M. J. Hickey; Joseph Dougherty; A. J. Head; J. W. Wilson; William Munds; J. I. Gardner; W. T. Brown; H. H. Cartter; F. G. Brecht; R. N. Fredericks; Ed. W. Wells; T. W. Otis; Morris Goldwater; E. Block; Chas. A. Dake; Henry Brink-



meyer; Jake Marks; R. H. Burnister; Harry Brisley and J. N. McCandless, sureties on appeal bond, its costs in this court, taxed at — dollars, and its costs in the district court taxed at twenty-seven (\$27.00) dollars; together with all damages which the said appellee may sustain by the not levying the taxes directed by said judgment of the district court and certifying the same to the county treasurer of said Yavapai county, and the not doing the acts and things directed to be done by the said judgment; each of said sureties being bound in the sum set opposite his name: Samuel Hill \$1,000.00; N. Levy \$500.00; M. J. Hickey \$1,000.00; Joseph Dougherty \$1,000.00; A. J. Head \$1,000.00; J. W. Wilson \$1,000.00; William Munds \$1,000.00; J. I. Gardner \$1,000.00; W. T. Brown \$1,000.00; H. H. Carter \$1,000.00; F. G. Brecht \$1,000.00; R. N. Fredericks \$1,000.00; Ed. W. Wells \$1,000.00; T. W. Otis \$1,000.00; Morris Goldwater \$1,000.00; E. Block \$1,000.00; Chas. A. Dake \$1,000.00; Henry Brinkmeyer \$1,000.00; Jake Marks \$1,000.00; R. H. Burnister \$1,000.00; Harry Brisley \$1,000.00; J. N. McCandless \$500.00.

52 In the Supreme Court of the Territory of Arizona.

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|---|-----------------------|
| GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, | } January Term, 1900. |
| vs.<br>THE TERRITORY OF ARIZONA, Appellee.                    |                       |

Appeal from the district court, Yavapai county; R. E. Sloan, judge.

Reese M. Ling, district attorney of Yavapai county, attorney for appellant.

Charles F. Ainsworth, attorney general, attorney for appellee.

*Opinion by Street, C. J.*

The appellants constitute the board of supervisors of Yavapai county. The Territory, by Charles F. Ainsworth, its attorney general, on the second day of September, 1899, obtained from the district court an alternative writ of mandamus against the defendants, members of said board, requiring them to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the years 1898 and 1899, and the sum of thirty-seven cents on each one hundred dollars of valuation for the year 1900, for the purpose of paying interest on two hundred and fifty-eight territorial funding bonds of the denomination of one thousand dollars each, issued by the territorial loan commission on the seventeenth day of September, 1897.

53 Upon the return of the writ and the filing of defendants' answer, a statement of facts was submitted; which statement of facts the court adopted as its findings; and as a result arising from the conclusions of law and the findings of fact judgment was

rendered for the plaintiff, and defendants were required to make such levy for the years 1898, 1899 and 1900. The defendants appeal and present to this court three questions for consideration:

"First. Were said bonds legally funded, without any demand from the board of supervisors of Yavapai county upon the territorial loan commission for such funding?"

"Second. Could said bonds be legally funded after January 1, 1897?"

"Third. Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such funding?"

The history of these bonds is fully set out in former decisions of this court; to wit:

Gage *vs.* McCord, governor, *et al.*, 51 Pac. Rep. 977;

Cocoonino County *vs.* Yavapai County, 52 Pac. Rep. 1127;

Yavapai County *vs.* McCord *et al.*, 59 Pac. Rep. 99.

The first and second questions presented for our view in this case were therein discussed and settled; as also in the case of *Bravin vs. The City of Tombstone*—another territorial funding bond case, reported in the 56 Pac. Rep. 719.

The district attorney for Yavapai county gracefully admitted the binding force of these decisions, but invited the court's attention again to the questions, because of the grave results embodied in their solution. The discussion of those questions in his brief is full and explicit, but a study of it does not enable this court to change its views upon the questions referred to. In those cases this court held that the bonds were valid; that they were regularly issued; that a demand from the holders of the bonds was sufficient, without a demand from the municipal authorities. We also held that the limit of January 1, 1897, mentioned in the act permitting the re-funding of bonds, was intended to be restrictive only of the indebtedness which could be funded, and made the act applicable to such obligations as existed and were outstanding prior to that time; but that it did not terminate on that day the authority of the territorial officers to fund said obligations.

The third question—"Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such funding," is answered by our statute (par. 2932, subdivision 2): "All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

The case cited by appellant (*People vs. Coghill*, 47 Cal. 361), in which it was held that two members of the board of commissioners were not legally empowered to act, in the absence of the third, is

not in point; for it was the provision of that act that "the board of supervisors to whom the report shall be made, shall appoint three commissioners, who shall jointly view and assess upon each and every acre to be reclaimed or benefitted thereby," etc. There is no provision in the funding act of 1887, as amended by Congress in 1890, that the commissioners should jointly act, but the board was treated as a unit. The funding act is not strictly a congressional act; it is a territorial act, passed by the legislature of the Territory and embodied in the Revised Statutes of 1887. For the purpose of assuring the validity of the act, and of placing any issuance of bonds under it beyond dispute, the act was presented to Congress for its affirmative approval, which it gave with some few amendments, generally verbal in their nature and evidently for the purpose of making the act more specific. The title of the act passed by Congress clearly carries out that view, for the first provision of that act is, "that the act of the Revised Statutes of Arizona of 1887, known as title XXXI, 'funding,' be and is hereby amended so as to read as follows; and that as amended the same is hereby approved and confirmed, subject to future territorial legislation." The act being a territorial act, and the commission being the creation of the Territory, is directly affected by par. 2932, *supra*. The judgment of the district court is affirmed.

WEBSTER STREET, C. J.

We concur:

GEO. R. DAVIS, A. J.

FLETCHER M. DOAN, A. J.

(Endorsed:) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al.*, appellants, *vs.* The Territory of Arizona, appellee. Opinion. Filed March 28, 1900. Thomas Grindell, clerk.

57 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appellants, )

*vs.*

THE TERRITORY OF ARIZONA, Appellee. )

Now come the above-named appellants, George Schuerman, D. E. Dumas, and J. R. Beatson, and move the above-named court for a rehearing of the above-entitled cause, and show to said court:

That the name of the counsel of the appellee in said cause is Charles F. Ainsworth, attorney general of the Territory of Arizona, and that his place of residence is the city of Phoenix, in the county of Maricopa and Territory of Arizona.

That the grounds relied on for such rehearing are as follows:

1. That this court erred in holding and deciding that the bonds mentioned in the record and known as the P. & A. C. bonds, were legally funded without a demand for such funding by the board of supervisors of Yavapai county.

2. That the above-named court erred in holding and deciding that the said bonds were legally funded after January 1st, 1897.

3. That said court erred in holding and deciding that paragraph 2932, subd. 2, Rev. Statutes Arizona, 1887, applied to the loan commission of Arizona, and hence that two of said commission  
 58 could legally act in the matter of funding said bonds, for the following reasons: That while the title of the act of Congress of June 25th, 1890, is as stated by this court in its opinion filed herein, yet a perusal of the body of the act shows that Congress instead of approving the Arizona funding act, itself passed a new act upon the same subject and by such act created a body to be known as the loan commission of Arizona. Whatever powers and duties the board of loan commissioners had, were derived from the act of Congress and not from any previous territorial legislation. The territorial law was necessarily superseded by the act of Congress which in itself covers the entire ground, and is the only authority for any action to be taken by the loan commission. Paragraph 2932 in terms applies only to "the statutes of this Territory," and hence could not apply to a body created by an act of Congress, even though the act of Congress related wholly to this Territory, and this court was in error in applying the provisions of par. 2932 to a body created by an act other than the "statute of this Territory."

The appellants further urge in support of the grounds of this motion the arguments and authorities contained in their brief on file in this cause.

Wherefore, appellants pray that this court grant a rehearing of this cause.

REESE M. LING,

*Attorney for Appellants.*

(Endorsed:) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, D. E. Dumas and J. R. Beatson, appellants, *vs.* The Territory of Arizona, appellee. Motion for a rehearing. Filed April 6th, 1900. Thomas Grindell, clerk.

59 In the Supreme Court of the Territory of Arizona.

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| GEORGE SCHUERMAN, D. E. DUMAS, and | } Minute Entry, June 2nd,<br>1900. No. 709. |
| J. R. Beatson, Appellants,         |   |
| <i>vs.</i>                         |   |
| TERRITORY OF ARIZONA, Appellee.    |   |

In this cause it is ordered that the motion for rehearing filed herein by appellants, be and the same is hereby denied.

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| GEORGE SCHUERMAN, D. E. DUMAS, and | } Minute Entry, June 2nd,<br>1900. |
| J. R. Beatson, Appellants,         |                                    |
| <i>vs.</i>                         |                                    |
| TERRITORY OF ARIZONA, Appellee.    |                                    |

In this cause Mr. Reese M. Ling, attorney for appellants, in open court gave notice of appeal from the judgment of this court to the Supreme Court of the United States, and moved the court that it

fix the amount of the bond on appeal and that the remittitur herein be stayed for sixty days.

Whereupon, it was ordered by the court that the amount of the cost bond on appeal in this cause be fixed in the sum of one thousand dollars, and that the remittitur herein be stayed for sixty days.

60 In the Supreme Court of the Territory of Arizona

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appellants, )

vs.

THE TERRITORY OF ARIZONA, Appellee. )

*Statement of the Facts.*

The above-entitled cause having been duly argued and submitted to this court at the January, 1900 term thereof, and the judgment appealed from having been on the 28th day of March, 1900 in all things affirmed by this court and a motion for a rehearing having been filed by the appellants and the same having been overruled, and the appellants desiring to prosecute an appeal to the Supreme Court of the United States from the judgment of this court in this case and having applied for a statement of the facts of the case in the nature of a special verdict pursuant to the act of Congress in such case made and provided :

Now therefore, this court does now on this 2nd day of June 1900, the same being a day of the January 1900 term of said court, in open court make and file the following statement of the facts of this case in the nature of a special verdict and statement of facts, to wit :

1. The appellants, George Schuerman, D. E. Dumas, and  
61 J. R. Beatson, hereinafter called the defendants, are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai in the Territory of Arizona.

2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. railroad bonds, upon which there was due, according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January, 1897.

3. On the 18th day of November, 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December, 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. After the 1st day of January, 1897, the said bonds were presented by the holders thereof to the said board of loan commissioners for funding and on the 17th day of September, 1897, the said board of loan commissioners (only two of its members being present as

hereinafter stated) met at the city of Phoenix and funded said  
62 bonds issued by said Yavapai county at the request and demand of the holders of said bonds, by exchanging therefor  
258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent. per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona  
has paid all the interest thereon at the times when the same  
63 became due and payable, amounting in all, at the date hereof, to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory of Arizona, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax-roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county; that said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. railroad bonds, and no notice was ever given to said  
64 board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid, maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building  
65 and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

14. That the amount in dispute in this action exclusive of interest and costs is the sum of \$23,638.38.

Done in open court this 2nd day of June, 1900.

By the court.

WEBSTER STREET,

*Chief Justice of the Supreme Court of the Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al.* vs. Territory of Arizona. Statement of facts. Filed June 2, 1900. Thomas Grindell, clerk.

66 In the Supreme Court of the Territory of Arizona.

|   |            |
|---|------------|
| GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, | } No. 709. |
| Appellant,  |            |
| <i>vs.</i>  |            |
| THE TERRITORY OF ARIZONA,                         | Appellee.  |

The above-named appellants respectfully represent that there is manifest error committed to their injury by the final judgment of the supreme court of the Territory of Arizona, rendered on the 28th day of March, 1900, in the above-entitled cause, in which the judgment of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, was affirmed, and which said judgment was rendered against appellant.

Wherefore, said appellants, conceiving themselves to be aggrieved, by said judgment of the supreme court of Arizona, hereby appeal from said judgment to the Supreme Court of the United States and pray that said appeal may be allowed, and that a transcript of the record, proceedings, judgment, decisions, and opinion, in this cause and a statement of the facts in said cause, as found by this court, be duly authenticated, and sent to the Supreme Court of the United States.

REESE M. LING,  
*Attorney for Appellants.*

67 And now, to wit, on the second day of June, 1900, the appeal prayed for, in the foregoing petition, is hereby allowed, with citation to issue on the filing of a bond in the penal sum of one thousand dollars, with two or more good sureties, to be approved by this court; and all proceedings under said judgment shall be stayed upon the filing of a supersedeas bond, in the sum of seventy-five hundred dollars, to be approved by this court or chief justice thereof, all proceedings shall be stayed for a period of sixty days from the date hereof, during which said time, said bond shall be filed.

WEBSTER STREET,

*Chief Justice of the Supreme Court of the Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al. vs.* Territory of Arizona. Petition for, and allowance of, appeal. Filed June 2, 1900. Thomas Grindell, clerk.

68 In the Supreme Court of the Territory of Arizona.

|   |            |
|---|------------|
| GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, | } No. 709. |
| Appellants,                                       |            |
| <i>vs.</i>  |            |
| THE TERRITORY OF ARIZONA,                         | Appellee.  |

The above-named appellants respectfully represents that there is manifest error committed to their injury by the final judgment of the supreme court of the Territory of Arizona, rendered on the 28th day of March 1900, in the above-entitled cause in which the judgment of the district court of the fourth judicial district of the Terri-



tory of Arizona in and for the county of Yavapai, was affirmed, and which said judgment was rendered against the said appellants.

Wherefore, said appellants, conceiving themselves to be aggrieved by said judgment of the supreme court of the Territory of Arizona, hereby appeal from said judgment to the Supreme Court of the United States and pray that said appeal may be allowed, and that a transcript of the record, proceedings, judgment, decisions and opinion in this cause and a statement of the facts in said cause, as found by this court, be duly authenticated and sent to the Supreme Court of the United States.

REESE M. LING,  
*Attorney for Appellants.*

69 And now, to wit, on the 24th day of July, 1900, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue upon the filing of a bond in the sum of one thousand dollars, with two or more good sureties to be approved by the chief justice of this court, and all proceedings under said judgment shall be stayed upon the filing of a supersedeas bond in the sum of seven thousand five hundred dollars, to be approved by this court or the chief justice thereof.

WEBSTER STREET,  
*Chief Justice of the Supreme Court of the  
Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.*, vs. Territory of Arizona. Petition for and allowance of appeal. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

70 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appel- }  
lants, }  
vs. }  
THE TERRITORY OF ARIZONA, Defendants. }

Know all men by these presents, that we, George Schuerman, D. E. Dumas and J. R. Beatson, as principals, and Morris Goldwater, T. W. Otis; W. H. Smith; Henry Brinkmeyer; Ed. W. Wells; W. T. Brown; A. J. Head; E. Block and J. W. Wilson; J. I. Gardner, as sureties, are held and firmly bound unto the Territory of Arizona, in the full and just sum of eight thousand five hundred dollars, to be paid to the said Territory of Arizona, its certain attorney, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this 23rd day of July in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the supreme court of the Territory of Arizona, in a suit depending in said court between George Schuer-

man, D. E. Dumas and J. R. Beatson, appellants, and The Territory of Arizona, appellee, a final judgment was rendered against the said George Schuerman, D. E. Dumas and J. R. Beatson, appellants, and the said George Schuerman, D. E. Dumas and J. R. Beatson, 71 appellants, having obtained an allowance of appeal and filed a copy thereof in the office of the clerk of said supreme court of the Territory of Arizona to reverse the said judgment in the aforesaid suit, and a citation directed to the said Territory of Arizona, appellee, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington, on the 22nd day of Septemebr, 1900;

Now the condition of the above obligation is such, that if the said George Schuerman, D. E. Dumas and J. R. Beatson, appellants shall prosecute said allowance of appeal to effect, and answer all costs and damages, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

G. H. SCHUERMAN. [SEAL.]

D. E. DUMAS. [SEAL.]

J. R. BEATSON. [SEAL.]

MORRIS GOLDWATER. [SEAL.]

One thousand dollars.

T. W. OTIS. [SEAL.]

W. H. SMITH. [SEAL.]

HENRY BRINKMEYER. [SEAL.]

ED. W. WELLS. [SEAL.]

W. T. BROWN. [SEAL.]

One thousand dollars.

A. J. HEAD. [SEAL.]

E. BLOCK. [SEAL.]

J. W. WILSON. [SEAL.]

J. I. GARDNER. [SEAL.]

Scaled and delivered in presence of—

REESE M. LING.

SAMUEL L. PATTEE.

Approved by—

WEBSTER STREET,

*Chief Justice of the Supreme Court  
of the Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.* vs. Territory of Arizona. Bond on appeal. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

72 In the Supreme Court of the Territory of Arizona.

|  |                         |
|--|-------------------------|
| GEORGE SCHUERMAN, D. E. DUMAS, and<br>J. R. Beatson, Appellants,<br><i>vs.</i> | } Assignment of Errors. |
| THE TERRITORY OF ARIZONA, Appellee.  |                         |

And now comes the said appellants, George Schuerman, D. E. Dumas and J. R. Beatson, by Reese M. Ling, their attorney, and say that in the record and proceedings in the above-entitled cause in the supreme court of the Territory of Arizona, there is manifest error in this, to wit:

1st. The said supreme court of the Territory of Arizona erred in affirming the judgment of the district court and in holding that said district court did not err in overruling the general demurrer of defendants to the complaint of the plaintiff.

2nd. The said supreme court erred in affirming the judgment of the district court and in holding that said district court did not err in overruling the special demurrer of defendants to the plaintiff's complaint.

3rd. The said supreme court erred in affirming the judgment of the district court and in holding that said district court did not err in finding as a conclusion of law that those certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai

73 in aid of the construction of the railroad known as the Prescott & Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid subsisting obligations of the county of Yavapai.

4th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof was in all respects regular and valid.

5th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that said bonds so funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the county of Yavapai is liable for the same and for all the interest accruing on said bonds.

6th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that the defendants herein are legally bound to levy and assess the sums of 32 cents on each one hundred dollars and 37 cents on each one hundred dollars of valuation of all the taxable property in said Yavapai county.

7th. The said supreme court erred in affirming the judgment of said district court and in holding that said district court did

74 not err in rendering judgment in favor of the plaintiff upon the agreed statement of facts, adopted as the findings of fact.

8th. The said supreme court erred in holding and deciding that no demand for the funding of said bonds by the board of supervisors of Yavapai county was necessary in order that the same might be legally funded under the provisions of the act of Congress approved June 6th, 1896, and in affirming a like ruling and decision by the said district court.

9th. The said supreme court erred in holding and deciding that the bonds mentioned in the complaint in this action and known as the P. & A. C. Railroad bonds, were legally funded after January 1st, 1897, under the provisions of the act of Congress approved June 6th, 1896, and in affirming the judgment of said district court, based upon a like ruling and decision.

10th. The said supreme court erred in holding and deciding that the said P. & A. C. Railroad bonds, mentioned in the said complaint, were legally funded at the meeting of the board of loan commissioners of the Territory of Arizona on September 17th, 1897, at which only two members of said board were present, the third member of said board not being present or acting and not being in any manner consulted with reference to said funding, and in affirming the judgment of said district court based upon a like ruling and decision.

11th. Upon the facts found by the said supreme court and contained in its statement of facts in the nature of a special verdict, the said supreme court erred in affirming the judgment of the said district court, and in finding as a conclusion of law from said facts that the judgment of said district court was not erroneous.

12th. The said supreme court erred in affirming the judgment of said district court and in rendering judgment against said appellants upon the facts found by the said district court, and by the said supreme court, and by the law of the land the said judgment ought to have been given for the said appellants against the said appellee.

And the said appellants pray that the judgment aforesaid rendered by the said supreme court of the Territory of Arizona, may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

REESE M. LING,

*Attorney for Appellants.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.* vs. Territory of Ariz. Assignment of errors. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

76

*Clerk's Certificate.*

UNITED STATES OF AMERICA, }  
*Territory of Arizona,* } ss.:

I, Thomas Grindell, clerk of the supreme court of the Territory of Arizona, by virtue of the foregoing appeal, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 75, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of George Schuerman, D. E. Dumas and J. R. Beatson, appellants, against The Territory of Arizona, appellee, as the same remain of record and on file in said office.

Also that the citation attached hereunto, is the original citation issued by said supreme court of the Territory of Arizona.

In testimony whereof, I have caused the seal of the said supreme court of the Territory of Arizona to be hereunto affixed at the city of Phoenix, in the Territory of Arizona, this 25th day of July, 1900.

[Seal Supreme Court of Arizona.]

THOMAS GRINDELL,  
*Clerk of the Supreme Court of the Territory of Arizona,*  
 By ANGIE B. PARKER,  
*Deputy Clerk.*

77 In the Supreme Court of the United States.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, }  
 Appellants, }  
 vs. } Citation.  
 THE TERRITORY OF ARIZONA, Appellee. }

UNITED STATES OF AMERICA, ss.:

The President of the United States to the Territory of Arizona,  
 Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 22nd day of September 1900, pursuant to an appeal filed in the clerk's office of the supreme court of the Territory of Arizona, wherein George Schuerman, D. E. Dumas and J. R. Beatson are appellants, and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 24th day of July in the year of our Lord one thousand nine hundred.

WEBSTER STREET,  
*Chief Justice of the Supreme Court  
 of the Territory of Arizona.*

78 TERRITORY OF ARIZONA, } ss:  
*County of Maricopa,*

On this 24th day of July in the year of our Lord one thousand nine hundred, personally appeared Reese M. Ling before me, the subscriber, Angie B. Parker, and makes oath that he delivered a true copy of the within citation to Charles H. Akers, acting governor of the Territory of Arizona, and to Charles F. Ainsworth, attorney general of the Territory of Arizona, at Phoenix, Arizona, on the 24th day of July 1900.

REESE M. LING,

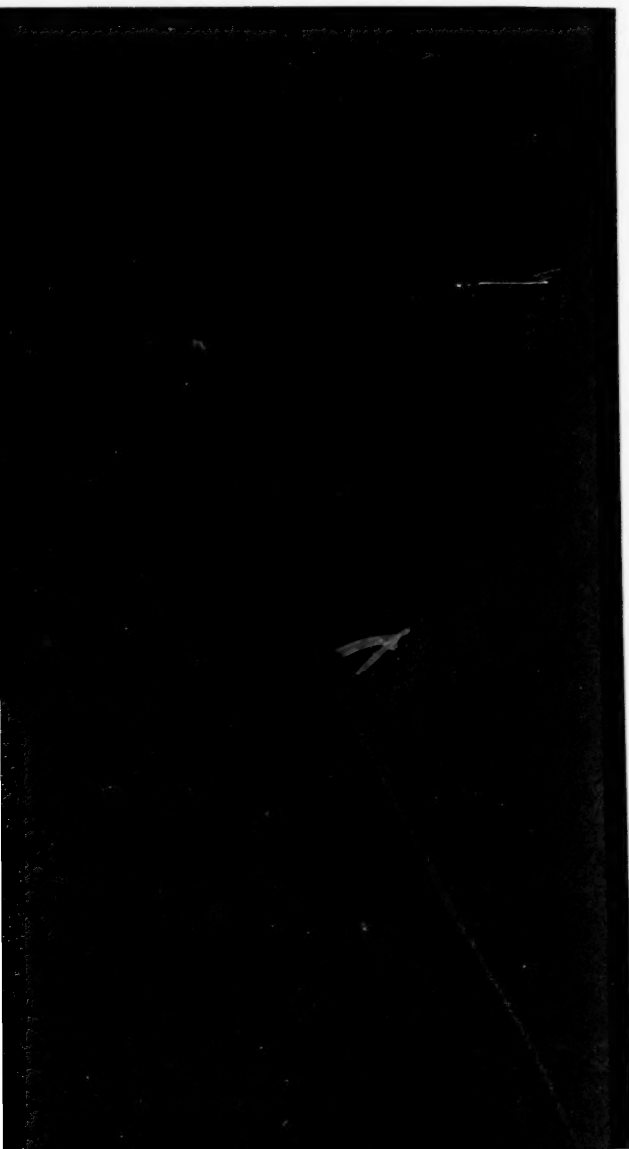
Sworn to and subscribed before me this 24th day of July 1900.

[Seal Supreme Court of Arizona.]

ANGIE B. PARKER,  
*Deputy Clerk Supreme Court of Arizona Territory.*

79 [Endorsed:] No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman *et al.* vs. Territory of Ariz. Citation. Filed July 24th 1900. Thomas Grindell clerk. By Angie B. Parker deputy.

Endorsed on cover: File No. 17,894. Arizona Territory supreme court. Term No. 151. George Schuerman, D. E. Dumas, and J. R. Beatson, appellants, vs. The Territory of Arizona. Filed September 1, 1900.



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

**No. 151.**

GEORGE SCHEURMAN, D. E. DUMAS  
AND J. R. BEATSON,  
*Appellants,*

vs.

TERRITORY OF ARIZONA.

## APPELLANT'S BRIEF.

### STATEMENT OF THE CASE.

This action was brought by the Territory of Arizona through its attorney-general, on the 2d day of September 1899, against the defendants, who constitute the board of supervisors of Yavapai county, for the purpose of compelling them to levy a tax of thirty-two cents on each \$100 of valuation of the taxable property in said county for the purpose of paying the interest on certain territorial funding bonds issued by the Territory of Arizona, in lieu of certain bonds known as the P. & A. C. railroad bonds, theretofore issued by Yavapai county, maturing in the years 1898 and 1899, and to compel the defendants to levy a further tax of thirty-seven cents on each \$100 of valuation of the property of said county for the purpose of paying the interest on said territorial funding bonds matur-



ing in the year 1900. An alternative writ of mandate was issued and served upon the defendants, and on the return day of said writ, September 13, 1899, defendants filed their answer and return. On the 14th day of September, 1899, the cause was submitted to the court for decision upon an agreed statement of facts, which statement of facts is adopted by the trial court as its findings of fact, and judgment was ordered and entered for the plaintiff as prayed in its complaint. A motion for a new trial was made and denied, and from the judgment and the order denying a new trial defendants prosecute this appeal.

The facts being agreed upon by the parties and fully set forth in the abstract, we do not deem it necessary to here make any further statement of the case, but will only refer to the agreed facts in the brief when they may be pertinent.

#### ASSIGNMENT OF ERRORS.

1st. The court erred in overruling the general demurrer of the defendants to the complaint of the plaintiff.

2d. The court erred in overruling the special demurrer of the defendants to the plaintiff's complaint.

3rd. The court erred in finding as a conclusion of law that these certain 258 railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott & Arizona Central Railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai.

4th. The court erred in finding as a conclusion of law that the action of the loan commission of the territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof was in all respects authorized and valid.

5th. The court erred in finding as a conclusion of law that said bonds so funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the county of Yavapai is liable for the same and for all the interest accruing on said bonds.

6th. The court erred in finding as a conclusion of law that the defendants herein are legally bound to levy and assess the sums of thirty-two cents on each \$100 and thirty-seven cents on each \$100 of valuation of all the taxable property in said Yavapai county.

7. The court erred in holding and deciding that the bonds mentioned in the complaint in this action, known as the P. & A. C. Railroad bonds, were legally funded after January 1, 1897, under the provisions of the act of Congress approved June 6, 1896.

8th. The court erred in holding and deciding that no demand for the funding of said bonds by the board of supervisors of Yavapai county was necessary in order that the same might be legally funded, under the provisions of said act of Congress, approved June 6, 1896.

9th. The court erred in holding and deciding that said P. & A. C. Railroad bonds, mentioned in the complaint herein, were legally funded at the meeting of the board of loan commissioners of the Territory of Arizona, on September 17, 1897, at which only two members of said board were present, the third member of said board not being present or acting, and not being in any manner consulted with reference to said funding.

10th. The court erred in rendering judgment in favor of the plaintiff upon the agreed statement of facts, adopted as the findings of fact.

11th. The court erred in not rendering judgment in favor of the defendants upon the agreed statement of facts, adopted as the findings of fact.

12th. The court erred in overruling defendants' motion for a new trial.

#### ARGUMENT.

In presenting the matters under discussion for consideration to this court, the counsel does so without the fear and trembling which characterized its presentation in the lower court. The particular matters under discussion are, as far as we can ascertain, foreign to this court inasmuch as a

curative act of the character of the act of June 6, 1896, has no exact counterpart. However, the principles of law applicable to this case are well settled and but for the decisions of the Supreme Court of the Territory of Arizona are all unquestionably with the appellants. At the time of the passage of the act of June 6th, there were many outstanding obligations of the Territory of Arizona (of counties, municipalities and school districts) which had been declared by this court to be absolutely void. The invalidity dated from their conception and it was not by subsequent legislation or acts of parties that they became so. They were conceived in fraud, born in iniquity and reared in a flagrant disregard to the law of the land.

We urge especially the following, which are presented in the Assignment of Errors, as cogent reasons why the judgment of the lower court should have been in favor of the appellants and why this court should so hold:

*First.* That the bonds in question were illegally funded, without any demand having been made by the board of supervisors of Yavapai county upon the Territorial Loan Commission for such funding.

*Second.* That said bonds were funded after January 1, 1897, and after the board of loan commissioners had any power so to do.

*Third.* That the bonds were improperly and illegally funded at a meeting of the board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of the said board were present, the third member being absent from the territory and not in any manner consulted with reference to said funding. (Transcript of Record, page 30, Statement of the Facts.)

# I.

As to the first point—that no demand was made by the authorities of Yavapai county for the bonds mentioned (Transcript of the Record, p. 29, paragraph 3, Statement of the Facts) and hence that such funding was invalid—it is

true that in the decisions of the Supreme Court of Arizona in *Bravin v. City of Tombstone*, 56 Pac. Rep. 719, and *Yavapai County v. McCord*, the Supreme Court of Arizona held that no demand was necessary. The act of Congress of June 25, 1890, authorized the funding of bonds "upon the official demand of said authorities" of the municipalities issuing the bonds sought to be funded. The Territorial Funding Act of March 19th, 1891, provides that "any person holding bonds of the character mentioned may exchange the same for territorial funding bonds as provided in that act." It is necessary in order to give the full effect to each of the acts, inasmuch as they both have in view the same purposes, that they should be considered together and their construction can admit of but one conclusion, namely, that the holders of the bonds may exchange them for bonds issued under the Territorial Funding Act *when official demand has been made by the municipal authorities for such funding*. Were the construction placed by the Supreme Court of Arizona upon the Territorial Funding Act of June, 1896, to prevail, then municipalities would be entirely at the mercy of holders of bonds, however illegal or invalid they might be. We take it that the purpose of the act was only to permit those political subdivisions which had invalid obligations existing (if indeed the term could be so used) to voluntarily assume their payment. No payment could be enforced in a court of law, but if it was desired, Congress sought to provide a way whereby these moral obligations could be discharged in a perfectly legal manner. It was the intention to permit the payment of void obligations simply to relieve those who might be liable in the event of payment and to permit the discharge of a moral obligation legally. No right, power or authority existed prior to the passage of the act of Congress for the payment of any of these illegal obligations. Only those were meant for the act itself especially designates them. The act is in the nature of one of a class well known to the legislative power, namely, a relief act. Had Congress intended to make all outstanding obligations of the territory valid, it never would have made any proviso, but would

have simply stated that they should be valid obligations from and after the passage of this act, without any condition whatever. But, on the contrary, the act having been passed for the benefit of a favored few, and being remedial legislation, is subject to the most severe construction which can be placed upon it. It might have been possible, and is altogether probable, that at the date of the passage of the act referred to, litigation was pending in the proper forum for an adjudication upon the rights of the respective parties in reference to these particular bonds. Can it be inferred by any conceivable reasonable construction which can be placed upon the act in question that Congress had the desire to usurp in its legislative capacity the right which has always been delegated to the courts, namely, the adjusting of differences, the settlement of demands and claims and the adjudication of the rights of parties? It certainly appears that Congress desired only to permit the funding of invalid obligations upon the request of the party vitally affected by the payment of the same and who assumed to pay an obligation which the highest tribunal in the land had declared to be, and so by the act itself, declared.

The act of the loan commissioners in funding depended upon the special power conferred, their jurisdiction coming only upon the request of the party who was compelled to bear the burden. The construction of the act is akin to an acknowledgment in writing reviving a debt or obligation already barred by the statute of limitations. It must be voluntary and made without any restriction. It is admitted by the statement of facts that the bonds in question were illegal. The act of Congress was directed toward those particular bonds. The bonds in question might have been issued without consideration, the municipality might have had a perfect defense to an action upon them, they might have been utterly void for some reason other than want of power to issue them, and yet, if the construction placed upon the act of Congress by the Supreme Court of the Territory of Arizona is the correct one, their payment can be compelled by the funding process without the

knowledge or consent of the municipal authorities and without giving them any opportunity to be heard. Such a construction is not within reason and we urge that it could not have been the intention of either Congress or the Territorial legislature to bring about any such consequence.

The Supreme Court of the Territory of Arizona, in *Bravin v. City of Tombstone, supra*, held that obligations might be funded either upon demand of the authorities or at the request of the holders of the obligations. We call attention to the stipulated statement of facts and this court can not find nor does it exist as a matter of fact that any request for the funding of the Yavapai county bonds (the bonds in question) was ever made by the holders thereof. The stipulated statement of facts and as allowed by the Supreme Court of the territory shows simply that two members of the Board of Loan Commissioners of the territory, funded or attempted to fund the bonds referred to. An examination of the statement of facts will show (page 29, paragraph 3) that instead of favoring the funding of the bonds in question, there was a recision of the request formerly made by the proper municipal authorities of Yavapai county for the funding of these bonds and that due notice of the recision was given to the loan commission before any action was taken by it, thus leaving the matter as if no demand had been made at all. Consequently it does not appear that any demand was made by the holders of the bonds or by the municipality issuing them for their funding and the funding by the board of loan commissioners was an unwarranted usurpation of a power which had not been granted to them by any act of Congress or of the territory legislature, and a voluntary assumption of a debt of Yavapai county.

## II.

Upon the second point it is the desire of the appellants to urge that the provisions of the acts of Congress of June 6, 1896, placed a limitation upon the time in which the bonds and obligations within mentioned might, under proper cir-

cumstances, be funded, and that the same could not be funded after January 1, 1897. This proposition has been before the Supreme Court of Arizona in the cases of *Gage v. McCord* and *Yapavai County v. McCord*, *supra*. Prior to the act of Congress above mentioned, bonds of the class issued under proper circumstances and of the same character as the bonds in question, had been held by this court to be absolutely void. *Lewis v. Pima County*, 155 U. S. 54. The act of Congress provided for the funding of outstanding obligations of the territory and the counties, municipalities and school districts thereof until January 1, 1897. The second section of the act provides, "and may be funded as in this act provided until January 1, 1897." By this act, Congress breathed life and validity into obligations that had been previously worthless. It was in the nature of a gift to the holders of the obligations in an amount equal to the face of the obligations and the accrued interest, and Congress might properly add such conditions to the gift as it saw fit. It required no extraordinary degree of foresight on the part of Congress to see that unless a limit was placed upon the time in which the holders of the rejuvenated bonds might take advantage of the rights therein granted, that a multitude of questions productive of litigation and subversive to the spirit and intent of the act, might arise. To avoid such a consequence it seems that Congress properly fixed a definite time within which the holders of the validated obligations might avail themselves of the privileges granted, and that after the expiration of that time their rights under the act were at an end. It would seem that it is impossible to prepare an act with the intention to therein place a limitation of the time within which bonds might be funded in stronger terms. No more strenuous language or more explicit prohibition could be inserted than in the act of June 6, 1896. No conceivable grammatical construction of the language used in sections one and two of the act of Congress will allow of a different view. The purpose of Congress in passing the act was to place a limit upon the time within which

the obligations might be funded and not a time prior to which obligations must have existed. No court could assume that it was the intention of Congress to grant any other right than that which it did grant.

Why should that view be indulged? It appears in the mind of this court in *Utter v. Franklin, supra*, that the remedy existed only for the benefit of the obligations created prior to the passage of the act. If the act was to apply to the indebtedness created after its passage (until January 1, 1897), it was in effect a license for the political divisions to create any sort of a void obligation, demand their funding, and thus burden the taxpayers, without them being advised either of their creation, character or funding.

Such construction must either repeal or suspend the Harrison act for the period from June 6 to January 1.

It will be contended by counsel for appellee that the decision of this court, *Utter v. Franklin, supra*, wherein it was ordered that a mandamus issue, is indicative that the funding might take place after January 1, 1897. We apprehend that the court in rendering that judgment did so upon the rights which existed at the date of the trial in the court below. The point, it seems, considered, was as to whether the right existed at the date of the institution of the suit. The fact that the time had elapsed could certainly make no difference, especially so to a matter not before the court.

If a judgment were rendered upon a note and there was a defense interposed which would avail defendant nothing and judgment be rendered against him, the veriest tyro in the law would not seriously contend that the judgment would avail a plaintiff upon a suit for the collection of another note where suit was not brought within the period of limitation. The rights of the parties were preserved at the date of the institution of the suit and rights upon other or similar contracts can only be enforced when those matters are called in question. As a matter of fact, the opinion of this court does not show that any consideration was paid, nor did we see how any could be, as to the date



of the funding. Mr. Justice Brown, in rendering the opinion, uses the language of the act as follows:

"The second section deals with the original bonds which had not authoritatively been funded and provides that all such as had been authoritatively issued under the authority of the legislature and which by the first section are authorized to be funded, should be confirmed, approved and validated and might be funded until January 1, 1897."

This language can admit of but one construction and we think that construction was in the language of the court in rendering the opinion. The expression used in the act of Congress of June 6, 1896, referring to the bonds validated as those *heretofore issued*, we assert, shows clearly that the act was only intended to apply to the outstanding obligations then existing at the time of the passage of that act. This being true, we are unable to see the force of the construction of the Supreme Court of Arizona in holding that the language "until January 1st, 1897," applied to existing obligations incurred before that time. The very purpose of the act determines that it did not apply to any indebtedness of the character described, except such as existed prior to June 6, 1896. What was it could be done until January 1, 1897? The answer is obvious. The bonds issued prior to June 6, 1896, might be funded as provided by the act. Congress had twice previous to the act under discussion been called upon to act in reference to Arizona bonds and it is but reasonable to suppose that in the passage of this act, the hope was indulged that no further recurrence of the matter would ever be necessary and that the holders of these invalid obligations would eagerly avail themselves of an opportunity to exchange them for a legal obligation. Congress had the same right to place a limitation upon the time as the various legislative bodies have to provide the time in which one must proceed in the enforcement of any legal right. If the holders of these bonds did not care to avail themselves of the privileges of the act of Congress, they retained their original standing before the passage of the act.

It may be said in passing, in reply to the opinion of the Supreme Court of Arizona rendered in the case of *Gage v. McCord*, 51 Pac. 977. That the time within which the holders of the bonds were required to act was ample and had Congress desired to grant further time, there is no reason to assume it would have failed to do so. While the court says it is not to be assumed "that Congress would in one breath grant liberal and generous concessions and in the next breath take away their practical benefits by the imposition of a seemingly unreasonable and unnecessary restriction and thus defeat its own purpose and intent," yet we can not see why the full benefit and intent of the act could not be satisfied in six months. Be that as it may, the question of extending a right which Congress has granted is not involved, but if assumptions are indulged in, it is but fair to believe that the holders of these worthless bonds would eagerly avail themselves of the beneficent provisions and all of the provisions of the act of Congress.

### III.

The findings of facts show that the alleged funding of the Yavapai county bonds mentioned took place at the meeting of the board of loan commissioners at which only two members of the board were present and acted and that the third member was absent from the territory and was not present at said meeting and took no part therein and was in no manner consulted with reference to the funding of said bonds, statement of the facts, page 30, paragraph 5. This constitutes the third objection to the validity of the funding.

In disposing of this question it is necessary to determine as to what the board of loan commissioners was, how created, and the necessity of their creation. The Supreme Court of the Territory of Arizona has held in *Utter v. Franklin*, *supra*, that the board of loan commissioners derived its power and was the creature of the act of Congress, while in the case at bar they hold that the board of loan commis-

sioners was a creature of the territorial legislature. It is asserted that the board of loan commissioners was created by the act of Congress of June 25, 1890, by the use of the following language:

"For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the Territory of Arizona, and such future indebtedness as may be or is now authorized by law, the governor of said territory, together with the territorial auditor and territorial treasurer and their successors in office shall constitute a board of commissioners to be styled the loan commissioners of the Territory of Arizona and shall exercise the powers and perform the duties hereinafter provided."

At the date of the passage of this act there was no such thing as a board of loan commissioners in the Territory of Arizona. It is true that the territorial legislature subsequently passed an act creating a board, but that board could only act under and by virtue of the act of Congress, for had not Congress permitted them to fund the indebtedness, no act of the territorial legislature could have done so, hence all of the powers exercised and enjoyed by the board of loan commissioners were derived from the only source of power, namely, the act of Congress.

In determining the character of the capacity in which a board shall act, the purpose of their action must be considered. The board of loan commissioners of the territory consisted of the three officers named. Their duties were *quasi* judicial. By their action the credit of the territory could be pledged by the redemption of bonds similar to those under consideration. The credit of the entire territory was pledged by such action as they might take even though the mere act of funding might be ministerial, still the acts which lead up to (and necessarily a part of) the funding were judicial in their character. It is insisted that a board of this character could not act through a majority of its members in the absence of the other member and that any act performed at such a meeting is void. The rule stated by Chancellor

Kent is, "that any matters of public trust, or powers conferred for public purposes, if all meet, the acts of the majority will bind." What board could be more public? Certainly no board that has ever been created for the Territory of Arizona was possessed of such public and widespread power. Its action affected the entire public. Every citizen owning taxable property within the entire territory would necessarily be affected by its action. In *People v. Coghill*, 47 Cal. 361, the Supreme Court of California, in passing upon the acts of two or three commissioners, under a statute providing for the appointment of three, held: "Where the act itself did not provide that a majority of the board should constitute a quorum, the acts of two of the board were clearly illegal even though the third had written that he did approve the action of the majority." The act of Congress does not provide that a majority shall act and simply that the three shall constitute a board with power to do the things therein specified.

In the case of the *First National Bank of North Bennington v. Mt. Tabor* (Vt.), 36 Am. Dec. 735, the Supreme Court of Vermont cites with approval the case above mentioned and states the rule as follows:

"The general rule in matters of public interest, the majority of those upon whom the power is conferred is recognized, provided all meet and confer, but not when the minority is ignorant of the transaction and has no legitimate opportunity to exercise its influence in the deliberations; or when the act in its terms requires the presence and concurrence of all."

Sutherland on Statutory Construction, page 500, tersely states the rule:

"Where any number of persons are appointed to act in a public manner they must all confer, but a majority may decide."

Also:

*Crocker v. Crane*, 21 Wend. 218.

*Babcock v. Lamb*, 1 Cowen, 238.

*Ex parte v. Rogers*, 7 Cowen, 526.

*McCoy v. Curtice*, 9 Wend. 17.

*Green v. Miller*, 6 Johns. 41.

It may be contended that the act of the territorial legislature (Revised Statutes, 1887, 361) created a board of loan commissioners, hence that the board derived its power from the act of the legislature. On the contrary it can not be shown that the board, even though it did exist at the date of the passage of the act of Congress, June 25, 1890, possessed any legal power; certainly not to fund the bonds in question. That power and authority comes alone from Congress and the act under which they were funded is an amendment beyond any question to the act of June 25, 1890, which last act creates the board. As we have already said, the Supreme Court of the territory has held the board to be a creature of the act of Congress, and also of the territorial legislature. The court is undoubtedly correct; it is certainly one or the other. At no place has Congress given the majority of the board power to transact business, hence the rule laid down by the authorities shows that the pretended meeting of the board of loan commissioners on September 17, 1897, was not a meeting of the board. The board had no power to act, and even though they had, we suggest, in closing, and the point is respectfully urged upon the court, that their action was wholly illegal. Were it possible to arrive at any other conclusion, the action of the board at best was but a voluntary assumption upon the part of the territorial authorities of a debt of Yavapai county, wherefore, by reason of the law, judgment should be for the appellants.

Respectfully submitted,

*Ruse W. Ling*

*Attorney for Appellants.*

No. 151.

FILED  
JAN 27 1902  
JAMES H. McKENNEY,  
Clerk.

Ex. of Ainsworth for Appellee.

Filed Jan. 27, 1902.  
Supreme Court of the United States.

OCTOBER TERM, 1901.

**No. 151.**

GEORGE SCHEURMAN, D. E. DUMAS and

J. R. BEATSON,

*Appellants,*

*v.s.*

THE TERRITORY OF ARIZONA.

BRIEF FOR APPELLEE, THE TERRITORY OF ARIZONA.

C. F. AINSWORTH,

*Attorney General of Arizona.*



# Supreme Court of the United States

OCTOBER TERM, 1901.

No. 151.

GEORGE SCHEURMAN, D. E.

DUMAS AND J. R. BEATSON,

*Appellants,*

VS.

TERRITORY OF ARIZONA.

## BRIEF FOR APPELLEE, THE TERRITORY OF ARIZONA.

### STATEMENT OF THE CASE.

This is an appeal from the judgment of the Supreme Court of the Territory of Arizona affirming a judgment of the District Court of the Fourth Judicial District of Arizona in an action of mandamus brought by the appellee, the Territory of Arizona, against the appellants, who constitute the Board of Supervisors of Yavapai county, for the purpose of compelling them as such board to levy a tax of thirty-two (32) cents on each one hundred (\$100) dollars of



valuation of taxable property in said county of Yavapai for the purpose of paying to the Territory the interest on certain Territorial funding bonds issued by the Territory of Arizona, in lieu of certain bonds known as the P. and A. C. Railroad Bonds, theretofore issued by Yavapai county, the interest on said funding bonds having matured in the years 1898 and 1899 and been paid by the Territory to the owners of said funding bonds; also to compel the appellants as a board to levy a further tax of thirty-seven (37) cents on each one hundred (\$100) dollars of valuation of said county of Yavapai for the purpose of paying the interest on said funding bonds aforesaid, maturing in the year 1900, said taxes having been duly levied by the Territorial Board of Equalization of the Territory of Arizona and by it duly certified to the county Board of Supervisors for said county of Yavapai, for the purpose of having the same entered upon the tax roll of said county and collected as the taxes for said county are collected.

The case was tried by the District Court on an agreed statement of facts, which are substantially embodied in the statement of facts found by the Supreme Court of Arizona. (Record pages 9, 10 and 11.)

#### "FINDINGS OF FACT.

"The Court finds that the statement of facts filed in this case is substantially true and correct and is hereby adopted as the findings of fact in this case, *and further the Court finds that all the material allegations of the complaint are true.*"

### "CONCLUSIONS OF LAW.

"As conclusions of law, the Court finds that those certain two hundred and fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott and Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai, Territory of Arizona.

"That the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing Territorial funding bonds in lieu thereof, was in all respects authorized and legal.

"That said bonds as funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the said county of Yavapai is liable for the same and for all the interest accruing on said bonds to be paid by taxation of all taxable property in said county of Yavapai to be levied and assessed by the board of supervisors acting as a board of equalization for said county, to be collected in the same manner as other taxes are collected, and by the treasurer of said county of Yavapai to be paid over to the Territorial treasurer.

"That the sum of 32 cents on each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accruing interest on the aforesaid bonds for the year 1898, and the sum of 31 cents for each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accrued interest in the bonds aforesaid by taxation for the year 1899, the Court finds that the defendants herein are legally bound to levy and assess the said sum on all the taxable property in Yavapai county."

Final judgment having been rendered in accordance with these findings for the plaintiff, the Territory of Arizona, (Record page 13) the defendants, Scheurman, Dumas and Beatson, appealed to the Supreme Court of the Territory of Arizona. (Record pages 21 and 22.)

That court affirmed the judgment of the court below, rendering the following opinion:

The appellants constitute the board of supervisors of Yavapai county. The Territory, by Charles F. Ainsworth, its attorney general, on the second day of September, 1899, obtained from the District Court an alternative writ of mandamus against the defendants, members of said board, requiring them to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the years 1898 and 1899, and the sum of thirty-seven cents on each one hundred dollars of valuation for the year 1900, for the purpose of paying interest on two hundred and fifty-eight Territorial funding bonds of the denomination of one thousand dollars each, issued by the Territorial loan commission on the seventeenth day of September, 1897.

Upon the return of the writ and the filing of defendants' answer a statement of facts was submitted; which statement of facts the Court adopted as its findings; and as a result arising from the conclusions of law and the findings of fact judgment was rendered for the plaintiff, and defendants were required to make such levy for the years 1898, 1899 and 1900. The defendants appeal and present to this court three questions for consideration:

"First. Were said bonds legally funded, with-

out any demand from the board of supervisors of Yavapai county upon the Territorial loan commission for such funding?

"Second. Could said bonds be legally funded after January 1, 1897?

"Third. Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such finding?"

The history of these bonds is fully set out in former decisions of this Court, to-wit:

Gage vs. McCord, Governor, et al.,

51 Pac. Rep. 977;

Coconino County vs. Yavapai County,

52 Pac. Rep. 1127;

Yavapai County vs. McCord, et al.,

59 Pac. Rep. 99.

The first and second questions presented for our view in this case were therein discussed and settled; as also in the case of Bravin vs. City of Tombstone, another Territorial funding bond case, reported in the 56 Pac. Rep. 719.

The district attorney for Yavapai county gracefully admitted the binding force of these decisions, but invited the Court's attention again to the questions, because of the grave results embodied in their resolution. The discussion of those questions in his brief is full and explicit, but a study of it does not enable this court to change its views upon the questions referred to. In those cases this court held that the bonds were valid; that they were regularly issued; that a demand from the holders of the bonds

was sufficient, without a demand from the municipal authorities. We also held that the limit of January 1, 1897, mentioned in the act permitting the refunding of bonds, was intended to be restrictive only of the indebtedness which could be funded, and made the act applicable to such obligations as existed and were outstanding prior to that time; but that it did not terminate on that day the authority of the Territorial officers to fund said obligations.

The third question, "Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory, and not in any manner consulted with reference to such funding," is answered by our statute (Par. 2932, Subdivision 2): "All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

The case cited by appellant (*People vs. Coghill*, 47 Cal. 361), in which it was held that two members of the board of commissioners were not legally empowered to act, in the absence of the third, is not in point; for it was the provision of that act that "the board of supervisors to whom the report shall be made, shall appoint three commissioners, who shall jointly view and assess upon each and every acre to be reclaimed or benefited thereby," etc. There is no provision in the funding act of 1887, as amended by congress in 1890, that the commissioners should jointly act, but the board was treated as a unit. The funding act is not strictly a congressional act; it is a

Territorial act, passed by the legislature of the Territory and embodied in the Revised Statutes of 1887. For the purpose of assuring the validity of the act, and of placing any issuance of bonds under it beyond dispute, the act was presented to congress for its affirmative approval, which it gave with some few amendments, generally verbal in their nature and evidently for the purpose of making the act more specific. The title of the act passed by congress clearly carries out that view, for the first provision of that act is, "that the act of the Revised Statutes of Arizona of 1887, known as Title XXXI, 'funding', be and is hereby amended so as to read as follows; and that as amended the same is hereby approved and confirmed, subject to future Territorial legislation." The act being a Territorial act, and the commission being the creation of the Territory, is directly affected by Par. 2932, *supra*.

The judgment of the District Court is affirmed.

(Signed) WEBSTER STREET, C. J.

We concur.

GEO. R. DAVIS, A. J.

FLETCHER M. DOAN, A. J.

The Supreme Court of the Territory made the following

#### STATEMENT OF FACTS.

The above-entitled cause having been duly argued and submitted to this court at the January, 1900, term thereof, and the judgment appealed from having been on the 28th day of March, 1900, in all things affirmed by this court and a motion for a rehearing having been filed by the appellants and the same having been overruled, and the appellants de-

siring to prosecute an appeal to the Supreme Court of the United States from the judgment of this court in this case and having applied for a statement of the facts of the case in the nature of a special verdict pursuant to the act of congress in such case made and provided :

Now, therefore, this court does now on this 2nd day of June, 1900, the same being a day of the January, 1900, term of said court, in open court make and file the following statement of the facts of this case in the nature of a special verdict and statement of facts, to-wit :

1. The appellants, George Schuerman, D. E. Dumas and J. R. Beatson, hereinafter called the defendants, are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai in the Territory of Arizona.

2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. railroad bonds, upon which there was due, according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the first day of January, 1897.

3. On the 18th day of November, 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December, 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to

and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. After the 1st day of January, 1897, the said bonds were presented by the holders thereof to the said board of loan commissioners for funding and on the 17th day of September, 1897, the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix and funded said bonds issued by said Yavapai county at the request and demand of the holders of said bonds, by exchanging therefor 258 Territorial funding bonds of said Territory, each of the denomination of \$1,000, and bearing interest at the rate of five per cent per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as interest on the 258 Territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said Territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said Territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the



office of the Territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said Territorial funding bonds, the Territorial treasurer of said Territory of Arizona has paid all the interest thereon at the times when the same became due and payable, amounting in all, at the date hereof, to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the Territorial board of equalization of said Territory of Arizona, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the Territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county; that said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned Territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county

for the funding of said P. & A. C. railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the Territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the Territorial funding bonds aforesaid, maturing in the year 1900, and the Territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the Territorial funding bonds issued in lieu of said P. & A. C. railroad bonds as aforesaid, but was insufficient to pay the interest on said Territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the Territorial auditor, representing the Territory of Arizona, of the board of

supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

14. That the amount in dispute in this action exclusive of interest and costs is the sum of \$23,638.38.

Done in open court this 2nd day of June, 1900.

By the Court.

(Signed)

WEBSTER STREET,

Chief Justice of the Supreme Court  
of the Territory of Arizona.

In the court below appellant filed twelve assignments of error (Record 35 and 36). In their brief here they rely upon but three errors, as follows:

First. That the bonds in question were illegally funded without a demand having been first made by Yavapai county on the Territorial loan commission.

Second. That said bonds were funded after January 1st, 1897, and after the authority of the loan commission to fund had expired.

Third. That the bonds in question were ille-

gally funded at a meeting of the board of loan commissioners, at which only two of the three members were present, the third member being at the time absent from the Territory of Arizona, and not consulted in relation thereto. (Record page 30, Statement of Facts.)

## ARGUMENT.

### I.

The bonds in question were legally funded, notwithstanding the same were funded by the loan commission of the Territory without a demand being made therefor by the county of Yavapai.

It is expressly found in the statement of facts in both the District and Supreme Courts that the holders of the P. & A. C. railroad bonds, issued by Yavapai county, presented them to the loan commission of the Territory of Arizona for funding and that they were by said loan commission on September 17th, 1897, on such request and demand by the holders thereof, funded by exchanging therefor 258 Territorial funding bonds of said Territory, each of the denomination of \$100 each and bearing interest at five per cent per annum, interest payable semi-annually. (Record pages 29 and 30, subdivision 4.)

The complaint in paragraph 3 (Record page 1) alleges that on said 17th day of September, 1897, the loan commission of the Territory of Arizona upon the request of the owners of said railroad subsidy bonds aforesaid duly and legally funded said railroad subsidy bonds, etc.

The finding of fact that there was a demand by

the owners of outstanding bonds of the county of Yavapai, to the Territorial loan commission, to have the same funded, is by the repeated decisions of this court, conclusive on this question.

Harrison vs. Perea, 168 U. S. 311.

Halloway vs. Dunham, 170 U. S. 615.

Young vs. Amy, 171 U. S. 179.

A demand having been made upon the loan commission of the Territory, by the owners of the P. & A. C. railroad bonds theretofore issued by Yavapai county, to have the same funded by exchanging the same for Territorial funding bonds, it therefore became and was the duty of the loan commission to make such exchange, the same being expressly authorized by Section 7, Territorial funding act of Arizona, approved March 19th, 1891, and act of congress approved June 6th, 1896.

*Sec. 7. Any person holding bonds, warrants or other evidence of indebtedness of the Territory, or any county, municipality or school district within the Territory, existing and outstanding on the 31st day of December, 1890, may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of exchange; but no indebtedness shall be redeemed at more than its face value and any interest that may be due thereon.*

"An Act amending and extending the provisions of an Act of Congress, entitled 'An Act approving with amendments the funding Act of Arizona,' approved June 25, 1890, and the act amendatory thereof and supplemental thereto, approved August 3, 1894.

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the provisions of the Acts of Congress approved June 25th, 1890, and August 3rd, 1894, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory, and the counties, municipalities and school districts thereof, as provided in the Act of Congress approved June 25th, 1890, until January 1st, 1897, and all outstanding bonds, warrants and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities and school districts thereof, heretofore authorized by legislative enactments of said Territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June 25th, 1890, and which said bonds, warrants and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the acts of the legislature by which they were authorized, shall be funded with the interest thereon which has accrued and may accrue until funded into the lower interest-bearing bonds as provided by this act.

"Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commission of Arizona under the provisions of the Act of Congress approved June 25th, 1890, and the act amendatory thereof and supplemental thereto approved August 3rd, 1894, are hereby declared to be valid and legal for the purposes for which they were issued and funded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legislature of said Territory as hereinbefore authorized to be funded are hereby confirmed.

approved and validated, and may be funded as in this act provided until January 1st, 1897; Provided, That nothing in this act shall be so construed as to make the government of the United States liable or responsible for the payment of any of said bonds, warrants or other evidences of indebtedness by this act approved, confirmed and made valid, and authorized to be funded.

"Approved June 6, 1896."

This court and the Supreme Court of the Territory of Arizona have expressly ruled that the above acts made it mandatory on the loan commission to make the exchange of bonds upon the demand of the owners thereof "without an official demand by the municipal authorities for such funding."

This court, in passing on this very question, used the following language:

"It is true that by the tenth section of the Act of Congress of June 25th, 1890, the loan commissioners were authorized to refund municipal bonds 'upon the official demand of said authorities' of the municipality, but there is no limitation of that kind in Section 7 of the Territorial funding act of March 19th, 1891, which declares that any person holding bonds, etc., may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of the exchange.' In addition to this, however, the Act of Congress of June 6th, 1896, declared that all the outstanding bonds, warrants, and other evidences of indebtedness of the Territory and its municipalities *shall* be funded with interest thereon, etc. We are therefore of the opinion that it was

made the duty of the loan commission by these acts to fund the bonds in question."

Utter vs. Franklin, 172 U. S. 416 on 425.

Bravin vs. Mayor, Etc., of City of Tombstone, 56 Pacific Reporter 719.

Yavapai County vs. McCord, 59 Pacific Reporter 99.

## II.

Did the Act of Congress of June 6, 1896, limit the time within which the bonds in question could be funded to January 1st, 1897, or was this date merely a limit for creating an indebtedness which could be funded?

In construing this act and particularly the phrase therein contained, "until January 1st, 1897," we submit that the court should be governed by the following familiar rules of construction, viz.: that statutes are to be interpreted according to the intention of the law makers, as ascertained not only from the language of a part, but from the language of all the acts in *puri materia*, even though such construction may seem contrary to the letter of the statute.

The rule by thumb that the plain literal meaning of a word or phrase should govern in interpreting statutes is subordinate to the more fundamental rule that the object of the court is to discover the real meaning and intent of the legislative body.

In order to discover this meaning it is proper to consider the act as a whole, together with all other acts in *puri materia*. The conditions existing at the time the act in question was passed and the surround-



ing circumstances may also be taken into consideration in determining its meaning. If then, after a careful examination, it is found that the plain literal meaning of the word or phrase would violate the manifest intent of the legislative body, such word or phrase may be interpreted as having such other import, consonant with reason, which will coincide with the true meaning and intent of such legislative body.

In *Holmes vs. Carley*, 31 N. Y., 289, the court in passing upon this question uses the following language: "It is an established rule of the courts in giving construction to a statute, first, to ascertain its intent. This may be determined not only from the language of a part, but from the language of the whole and every part of a statute; and the real intention, when accurately ascertained, will always prevail over the literal sense. The intention of the lawmaker is sometimes to be collected from the cause or necessity of making the statute; and however the intention may be ascertained, it should be followed with reason and discretion, though such construction may seem contrary to the letter of the statute, for it is the intent which often gives meaning to words otherwise obscure and doubtful. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter and a thing which is within the letter of the statute is not within the statute unless it is with the intention of the makers."

Again, it is said in *Gay vs. Seibold*, 97 N. Y., 472, on page 477: "It is not the words of the law but

the internal sense of it that makes the law, and our law, like all others, consists of two parts, viz., of body and soul; the letter of the law is the body of the law; *quia ration legis est anima legis.*"

In *State vs. Gerhardt* (Ind.) 33 Law. Rep. Annotated, 313, on page 323, the court in passing upon this question uses the following language: "The legislature is presumed to have had former statutes before it and to have been acquainted with their judicial construction and passed new statutes on the same subject with reference thereto.

*Steele vs. Lineberger*, 72 Pa., 241.

When a number of statutes, whenever passed, relate to the same thing or general subject matter, they are to be construed together and are *in pari materia*.

*U. S. vs. Freeman*, 44 U. S., 3rd Howard, 556-564.

*Ferguson vs. Monroe Co. (Supervisors)*, 71 Miss., 524.

*Lynton's appeal*, 104 Pa., 228.

In order to arrive at a proper construction of this Act, we deem it essential that the court should have before it the various funding acts of the Territory to which this particular act was passed as an amendment. We therefore print, as an appendix to this brief, these acts, together with the Territorial Memorial presented to Congress, which induced Congress to pass the Act of June 6, 1896. See appendix:

Page 34. Territorial Funding Act, approved March 10, 1887.

Page 41, Act of Congress, approved June 25, 1890.

Page 51, Territorial Funding Act of Arizona, approved March 19, 1891.

Page 56, Act of Congress, approved August 3, 1894.

Page 57, Territorial Memorial to Congress, approved June 6, 1896.

Act of Congress, approved June 6, 1896, page 14 herein.

With these rules in mind we will consider the construction to be placed upon the Act of Congress approved June 6, 1896.

The contention on the part of the appellants in this action is that the words "until January 1, 1897" mean that the loan commissioners were limited to the funding of any indebtedness whatsoever of the Territory of Arizona, whether it be Territorial debt or the debt of any municipality thereof to the first day of January, 1897, no matter when said debt was created or what rate of interest it bore. It must be, according to the appellants' construction, funded prior to January 1, 1897, or not at all.

The Funding Act of the Territory of Arizona, approved March 10, 1887, only authorized the loan commissioners, which were therein named as the Governor, Secretary of the Territory and Territorial Auditor, constituting such board of loan commissioners, to fund Territorial obligations. In other words, they were authorized to issue negotiable bonds of the Territory for the payment of existing

Territorial indebtedness, due and to become due, and for the purpose of paying, redeeming and refunding all or any part of the principal and interest, or either, of the existing or subsisting Territorial legal indebtedness. This law apparently had no bearing whatever upon the indebtedness of cities, towns or counties. In this condition of affairs Congress, on June 25, 1890, passed an act entitled "An Act Approving, With Amendments, the Funding Act of Arizona," above mentioned. By this later act it was expressly provided that the board of loan commissioners should be authorized to sell the negotiable bonds of the Territory for the purpose of not only paying off Territorial indebtedness, but for the purpose of paying off the outstanding indebtedness of cities, towns and counties as well, where such indebtedness bore a higher rate of interest than 5 per cent. This Act also authorized the loan commissioners to exchange bonds with the counties, municipalities and school authorities, taking up their respective indebtedness and issuing to the towns, counties and school districts the funding bonds of the Territory. This Act also provided that nothing therein contained should authorize any future increase of any indebtedness in excess of the limit prescribed by the Harrison Act; provided, however, that the then existing and outstanding indebtedness, together with such warrants as might be issued for the necessary and current expenses of carrying on Territorial, county, municipal and school government for the year ending December 31, 1890, could also be funded and bonds issued

for the redemption thereof, but that thereafter, viz., after December 31, 1890, no warrants, certificates or other evidence of indebtedness should be allowed to be issued or be legal where the same was in excess of the limit prescribed by the Harrison Act. It will be borne in mind that this Act was passed and approved by Congress on June 5, 1890. This Act, however, placed no limit whatever upon the time when the board of loan commissioners should act. The only limit in this Act provided was as to the date when the indebtedness was created. It extended the time for creating the indebtedness beyond the time when the Act was passed to December 31, 1890, the Act being passed, as above stated, on June 25, 1890. This Act was passed by Congress and expressly specified upon the face thereof that it was subject to future territorial legislation; that in pursuance of this Act the Territorial legislature passed the Act of March 19, 1891. This Act contains substantially the same provisions as contained in the Act of Congress, with the addition, however, that by section 7 thereof it was expressly provided that any person holding bonds, warrants or other evidence of indebtedness of the Territory, of any county, municipality or school district within the Territory, existing or outstanding on the 31st day of December, could exchange the same for bonds issued under the provisions of that Act at not less than their face or par value and accrued interest at the time of the exchange, provided that no indebtedness should be redeemed at more than its face value and any interest

that might be due thereon; that subsequent to the passage of this Act by the Territorial legislature Congress passed an act, approved August 3, 1894, by which it extended the time for the creation of debts of the Territory from December 31, 1890, to December 31, 1895, over one year beyond the date of the passage of the Act. And on June 6, Congress passed the further act, which is commonly known as the Funding and Curative Act. This Act, as was said before, was passed in pursuance of a memorial presented to Congress by the Territorial legislature, and is entitled "An Act Amending and Extending the Provisions of an Act of Congress, entitled 'An Act Approving, With Amendments, the Funding Act of Arizona, Approved June 25, 1890, and the Act Amendatory Thereof and Supplemental Thereto, Approved August 3, 1894.' " In the first section of this Act Congress expressly declares that the acts above mentioned are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory and the counties, municipalities and school districts thereof, as provided in the Act of Congress approved June 25, 1890, until January 1, 1897, and all outstanding bonds, warrants and other evidence of indebtedness of the Territory of Arizona, the counties, municipalities and school districts thereof, heretofore authorized by legislative enactment of said Territory, bearing a higher rate of interest than is authorized by the aforesaid Funding Act approved June 25, 1890.

It seems to us that Congress had in view but two

propositions: One was to validate those certain railroad bonds that were mentioned and described in the legislative memorial to Congress, and the other was to extend the time for the creation by the Territory, counties, municipalities and school districts of indebtedness that could be funded into Territorial funding bonds. Any other construction to be placed upon this statute would mean that Congress, when it said that it was to extend the time for funding obligations meant, not to extend, but to curtail the time, for, as the law unquestionably stood until this act of Congress of June 6, 1896, there was no limit whatever placed upon the time for the board of loan commissioners to act upon the funding of the indebtedness of the Territory, its counties, municipalities or school districts; that the only limit whatever that was placed upon them was the limit of time as to when the debts which they were called upon to fund were created, and in each event Congress, in passing the several acts above referred to, placed the extension of this time far beyond the time when the law which they were then passing went into effect.<sup>9</sup>

When, by the act of June 6, 1896 Congress validated these outstanding obligations, which had been decided by this court to be invalid, it by that act made these bonds valid for their face and interest at the rate mentioned in said bonds, viz., 7 per cent per annum. Why should Congress then say that unless the owners and holders of those bonds or the county authorities should, within the short period of six months, viz., before January 1, 1897, present these bonds to the loan commission to be funded? That

these several counties should continue to pay the rate of interest at 7 per cent per annum until said bonds should mature, in place of authorizing them to be placed on the same identical footing that other obligations of the counties, municipalities and school districts were placed under the former acts? Construing these statutes together and observing the purpose for which they were evidently passed, it seems to us that Congress intended and meant by the language above quoted to limit the time to which the indebtedness to be funded could be created, but not to terminate on that date the authority of the Territorial officers to fund such obligations. This is the construction that has been placed on these various acts by various decisions of the supreme court of the Territory.

In *Gage vs. McCord*, 51 Pac. 977, the supreme court used the following language: "We therefore read section 1 of this Act as authorizing the funding of all obligations of the Territory which existed and were outstanding prior to January 1, 1897, and not as limiting the sale and disposition of bonds for funding purposes by the loan commissioners to the absurdly short period of six months. It is not to be assumed that Congress would in one breath grant liberal and generous concessions and in the next breath take away their practical benefits by the imposition of a seemingly unreasonable and unnecessary restriction, and thus defeat its own purpose and intent."

In *Utter vs. Franklin*, 172 U. S. 416, this court decides on January 3, 1899, that a mandamus should



issue to the loan commissioners, compelling them to issue funding bonds to the owners of certain Pima county bonds, in exchange therefor, in accordance with the provisions of the Act of Congress of June 6, 1896. It hardly seems probable that this court would have ordered the mandamus to issue were the court to place the limitation on the act aforesaid of the loan commissioners as terminating on January 1, 1897. While it is true that a suit, in whatever court pending, is to be determined in accordance with the rights of the parties at the time the action was commenced, nevertheless, it seems to us that this court must have recognized the fact that in rendering the decision in the Utter case, that the limitation mentioned in the Act of Congress of June 6, 1896, had reference only to the time when the indebtedness should be created, and not to the time when the loan commissioners should fund the same.

Blevin vs. Mayer, etc., etc., of Tombstone, 56 Pacific R. 719.

Yavapai County vs. McCord, 59 Pacific R. 99.

### III.

We come then to a consideration of the last question raised by appellants, were said bonds legally funded at a meeting of the board of loan commissioners at which only two members of the board were present, the third being absent from the Territory?

As to this we present the following three propositions for consideration:

1. By direct statutory enactment in Arizona, where a board of officers consists of three or more, the majority of the board may meet and act; therefore the funding of these bonds was legal.

2. This act of funding the bonds was a mere ministerial act. When a *ministerial* power is conferred on a public board, only a majority of the board need meet and act. Therefore this act of funding was perfectly legal.

3. In cases where it is held that all the members of a public board must meet and then a majority may act, it is held sufficient if all the members are notified of the meeting, even though they do not attend; and where there is nothing of record to show that all were not notified, it will be presumed that all were notified. Therefore, in any event, this act of the two members of the board was legal.

The series of laws now under consideration began with the Act of the Arizona legislature of March 10, 1887 (appendix, page 34), called the Funding Act. This constituted the governor, auditor and secretary of the Territory the board of loan commissioners of the Territory. This Act was approved by the Act of Congress of June 25, 1890 (appendix, page 41), subject to future legislation by the Territory. This Act of Congress was subsequently added to by the Act of the Arizona legislature of March 19, 1891 (appendix, page 51).

It is clear from the provisions of these various acts that the board of loan commissioners was created by a Territorial statute, that the Act of Congress of June 25, 1890, was confirmatory of this

legislative act of the Territory, as to the creation of the board of loan commissioners, and in addition thereto, extended the powers of the board of loan commissioners, thus making the officers of the loan commission Territorial officers, confirmed by act of congress.

The legislature, by the Act of March 19, 1891, in construing this Act of Congress of June 25, 1890, construed the same to mean that they had authority to further legislate upon the same subject mentioned in the Act of Congress of June 25, 1890, and to this extent they extended the powers of the loan commission to fund outstanding bonds, warrants and indebtedness of counties, municipalities and school districts of the Territory, upon the application of the owners or holders thereof, and, while the Act of Congress of June 6, 1896, made no reference whatever to the Act of the legislature of the Territory of March 19, 1891, above referred to, nevertheless this court, in passing upon the authority of the loan commission to fund bonds and warrants of counties, municipalities and school districts, in the case of *Utter vs. Franklin*, 172 U. S. 417, held that the legislature had the right to extend the powers granted by Congress to the extent of authorizing the loan commission to fund bonds, warrants and other indebtedness of counties, municipalities and school districts upon the application of the holders thereof, clearly recognizing these officers to be Territorial officers in this sense. The loan commission, whether acting as purely Territorial officers or in the capacity of quasi federal officers, are, in either event, classified

as public officers and the Statutes of Arizona, so far as they relate to the powers and duties of public officers, should control. That by the Act of March 10, 1887, of the Arizona legislature, being R. S. of 1887, section 2932, subdivision 2, reads as follows: "All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to the majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

This statute, being passed by the same legislature and at the same time it constitutes the governor, secretary and auditor the board of loan commissioners, is equivalent to the legislature saying in the act creating the loan commissioners, that the majority of the board shall have full power and authority to act for the board. It is thus declared by the legislature to be the rule by which the authority of public officers shall be exercised, and is to be construed as the rule by which all statutes of Arizona creating public officers shall be construed. Following this rule of construction, then, the contention of the appellants must fail, as there is nothing in the law of the Territorial legislature or by the Act of Congress itself ratifying such laws of the Territory, requiring that all the members of the board of loan commissioners shall jointly exercise the authority conferred upon them. Therefore, under this rule of construction as prescribed by the Statutes of Arizona, the act of two members who did meet and who constituted a majority must be held to be perfectly legal.

The statute above mentioned, viz., subdivision 2 of section 2932, R. S. of 1887, has been construed in the case at bar by the supreme court of the Territory and by it held to be conclusive upon this proposition, and this court, we submit, should, in passing upon this particular question, follow the decision of the supreme court of the Territory to the same extent that the court follows the supreme court of a state upon the construction of a state statute.

This court has repeatedly held that it would follow the adjudications of the highest court of a state in the construction of its statutes, and that its interpretation would be accepted by this court as the true interpretation, whatever might be the opinion of this court as to its soundness.

Walker vs. State, Harbor Com., 17  
Wall, 648.

Elmendorf vs. Taylor et al., 10 Wheaton  
152.

Central Land Co. vs. Lindley, 159 U. S.  
103.

But even if no such statutory rule of construction existed, appellants' contention would not be correct, as it is pointed out in our two propositions following:

2. The act of funding these bonds was a mere ministerial act. The board is given no discretion in the matter. When demand is made upon them they must fund the bonds. This is settled by the case of Utter vs. Franklin, 172 U. S., 417, where a mandamus was held to be proper to compel the board to fund such bonds. A mandamus is only

proper to compel the performance of a ministerial act. Therefore this court must have held that the duty of the loan commissioners in funding the bonds in question was purely ministerial.

Appellants insist that even a majority of the whole number of members of the board cannot act unless the other members are present and have the opportunity to exercise their influence in the deliberations.

In this case the influence of the third member of the board could have had no effect on the deliberations, as the act was a mere ministerial one and had to be performed by the board *nolens volens*. There is then no reason for applying the rule insisted on by appellants that all the members should be present, and the rule in such cases is "*cessat ratio cessat ipsa lex*." The rule stated by appellants has no application whatever to the performance of ministerial acts.

People vs. Walker, 23 Barb. 312.

In this case the court held that in the performance of a mere ministerial act a majority only of a board need meet, and said:

"The English authorities being clear on the subject as to what the common law is in such a case, and the dicta here opposed to each other, the weight of authority seems to be in favor of the English rule; that in public cases, *not of a judicial character*, a majority make a quorum, if the majority may decide. This best comports with the spirit and general tenor of our laws, and with our republican institutions."

3. There are cases which hold that all the

members of a public board must meet to perform an act (these cases were almost all, we believe, cases where the act was one of judicial character, as are the cases cited by appellants); but there is a further qualification of this rule that if all the members are notified of the meeting, then even though all do not attend, the majority may act.

George vs. School District 6, Metc. 497.

William vs. School District No. 1, 21

Pick 75.

Horton vs. Garrison, 23 Barb. 176.

Mechem on Public Officers states the rule similarly:

Sec. 572. "...all must be present to deliberate, or, *what is the same thing, must be duly notified.*"

If this were not true, then one member of a board could obstruct all business of it by refusing to attend. There can be no doubt of the correctness of the proposition.

Now in the present case, the record shows that only two of the three members of the board were present; *but there is nothing to show that the third member was not duly notified of the meeting.*

The law is that when the record does not show that the members of the board were not notified of the meeting, it will be presumed they were, as the presumption is in favor of regularity.

Am. and Eng. En. of Law, vol. 19, p. 466.

"And where an act is done by a majority of those to whom the power is confided, the presence and concurrence, *or notice to and refusal to act*, of the rest will be presumed until the contrary appears."

Meehem on Public Officers, sec. 573:

"It will be presumed in the absence of anything to the contrary that all met and deliberated or were duly notified."

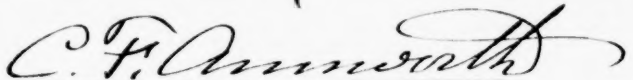
McCoy vs. Curtice, 9 Wend. 17, 24 Am.  
Dec. 113.

Yates vs. Russell, 17 Johns 468.

These cases hold the law to be that regularity is to be presumed unless irregularity appears of record. To constitute the alleged irregularity two things are necessary: first that all the members should not be present, and second that notice should not have been given to all of them. It does appear of record that all the members were not present, but it does not appear that the absent member was not duly notified: therefore under the law it must be presumed that he was duly notified and that the meeting was regular and the acts done there are valid.

It is submitted then that, even if the Rev. Statute Sec. 2032 is not conclusive on the question and even if the distinction between ministerial and judicial acts is not well taken, the meeting of the board must be held to have been a perfectly valid and legal one.

We therefore respectfully submit that the judgment of the court below is correct and should be affirmed.



Attorney General of Arizona.



## APPENDIX TO BRIEF.

### I.

TERRITORIAL FUNDING ACT ENACTED BY  
THE LEGISLATIVE ASSEMBLY OF THE  
TERRITORY OF ARIZONA, APPROVED  
MARCH 10, 1887.

[Revised Statutes of Arizona, 1887, p. 361.]

#### TITLE XXXI.

#### FUNDING.

#### Chapter One.

[Approved March 10, 1887.]

2039 (Sec. 1.) For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the Territory of Arizona, the governor of the said Territory, together with the Territorial auditor and Territorial secretary and their successors in office shall constitute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

2040 (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing Territorial indebtedness due, and to become due, and for the purpose of paying, redeeming and refunding all or any part of the principal and interest, or either of the existing and subsisting Territorial legal indebtedness, and also that which

may at any time become due, the said commissioners shall, from time to time, issue negotiable coupon bonds of this Territory, when the same can be done at a lower rate of interest and to the profit and benefit of the Territory.

2041 (Sec. 3.) Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed six and one-half ( $6\frac{1}{2}$ ) per cent. per annum, which interest shall be paid in gold coin, or its equivalent in lawful money of the United States, on the fifteenth day of January in each year, at the office of the Territorial treasurer, or at such bank in the city of New York, in the State of New York, or in the city of San Francisco, in the State of California, as may be designated by said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States within twenty-five years after the date of their issue.

They shall bear the date of their issue, state when, where and to whom payable, rate of interest and when and where payable, and shall be signed by said loan commissioners, and shall have the seal of the Territory affixed thereto, and countersigned by the Territorial treasurer, and bear his official seal, and shall be registered by the Territorial auditor in a book to be kept by him for that purpose, and the faith and credit of the Territory is hereby pledged for the payment of said bonds and the interest accruing thereon as herein provided.

2042 (Sec. 4). Coupons for the interest shall be

attached to each bond, so that they may be removed without injury or mutilation to bond.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the Territorial treasurer.

The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall said bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser as hereinafter provided.

2043 (Sec. 5.) Whenever the said loan commissioners shall have decided to refund or redeem all or any part of the existing indebtedness of this Territory, they shall direct the Territorial treasurer to advertise for a sale of bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the Territory, and at least one insertion in a newspaper published in the city of New York, in the State of New York, and in the city of San Francisco, in the State of California: such notice shall specify the amount of bonds to be sold, the rate of interest they shall bear, the place, day and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication: and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof, to the highest bidder or bidders therefor: Provided, That said loan commissioners shall have the right to reject any and all bids: And Provided Further, That they may refuse to make any award unless suffi-

cient security shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

2044 (Sec. 6.) When a sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in the act provided, and any expense incurred by them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said Territory, upon the order of the Territorial auditor, and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

They shall from time to time, after signing said bonds, deliver them to the Territorial treasurer, taking his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds issued under this act, delivered to him by said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the Territory and recorded by him in a book to be kept for that purpose. And the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

2045 (Sec. 7.) The Territorial treasurer shall sell said bonds for cash or exchange them for any of the Territorial indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any Territorial indebtedness be redeemed

at more than its face value and any interest that may be due thereon.

The said treasurer shall indorse, by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

2046 (Sec. 8.) All moneys received by said treasurer from a sale of said bonds shall be applied by him exclusively to the redemption of the Territorial indebtedness for the redemption of which such bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment to redeem such indebtedness, and thereafter interest on all such indebtedness due and outstanding shall cease.

2047 (Sec. 9.) There shall be levied annually upon the taxable property in this Territory, and in addition to the levy for other authorized taxes a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this Act to be placed by the Territorial treasurer in a fund to be known as the "Interest Fund." And ten years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent. of the total amount issued until all the bonds issued under the provisions of this act are paid and discharged.

The Territorial board of equalization, if there be one, if not, then the Territorial auditor, shall determine the rate of tax to be levied in the different counties in the Territory to carry out the provisions of this act, and shall certify the same to the "board of supervisors" in each county; and the said board of supervisors are hereby directed and required to enter such rate on the assessment roll of their respective counties, in the same manner and with the same

effect as is provided by law in relation to other Territorial and county taxes. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

All moneys derived from taxes authorized by the provisions of this act shall be paid into the Territorial treasury and shall be applied—

First—To the payment of the interest on the bonds issued hereunder.

Second—To the payment of the principal of such bonds: Provided, That all moneys remaining in the "interest fund" after the payment of the interest in each year, for the first ten years after the issuance of any bonds under this act, and all moneys remaining in the "redemption fund" after all said bonds shall have been paid and discharged shall be transferred by the Territorial treasurer to the Territorial general fund.

2048 (Sec. 10.) Whenever, after the expiration of the ten years from the date of issuance of any bonds under this act there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the Territorial treasurer to advertise as in the manner of the advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and can-

cellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the Territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The Territorial auditor shall keep a record of all bonds issued and disposed of by the Territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for redemption, the date, amount due thereon, and person surrendering.

2049 (Sec. 11.) When the treasurer pays or redeems any Territorial indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words "redeemed and cancelled," with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under this act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or the governor, or a committee of either branch of the legislature, or a joint committee of both.

2050 (Sec. 12.) It shall be the duty of the Territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund,

if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the Territorial auditor shall first draw his warrant on the Territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund, which said interest warrant shall be drawn at least one month previous to the maturing of the interest.

2051 (Sec. 13.) It shall be the duty of said board of loan commissioners to make a full report of all their proceedings had under the provisions of this act to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the Territorial legislative assembly.

2052 (Sec. 14.) No bond issued under the provisions of this act shall be taxed within this Territory.

[Took effect immediately.]

## II.

AN ACT OF CONGRESS APPROVED JUNE 25,  
1890. — AN ACT APPROVING, WITH  
AMENDMENTS, THE FUNDING ACT OF  
ARIZONA (26 Stat. 175).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

That the act of the Revised Statutes of Arizona of eighteen hundred and eighty-seven, known as "Title XXXI, Funding," be, and is hereby amended so as to read as follows, and that as amended the same is hereby approved and confirmed, subject to future Territorial legislation:



"TITLE XXXI.—FUNDING AND LOAN.

"Chapter One.

"Territorial, County, Municipal and School  
District Indebtedness.

"Par. 2030 (Section 1.) For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the Territory of Arizona and such future indebtedness as may be or is now authorized by law, the governor of the said Territory, together with the Territorial auditor and the Territorial secretary and their successors in office, shall constitute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

"Par. 2040 (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing Territorial indebtedness due, and to become due, or that is now, or may be hereafter, authorized by law and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest, or either of the existing and subsisting Territorial legal indebtedness, and also that which may at any time become due or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this Territory, when the same can be done at a lower rate of interest and to the profit and benefit of the Territory.

"Par. 2041 (Sec. 3). Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued

when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed five per centum per annum, which interest shall be paid in gold coin, or its equivalent in lawful money of the United States, on the fifteenth day of January in each year, at the office of the Territorial treasurer, or at such bank in the city of New York, in the State of New York, or in the city of San Francisco, in the State of California, or such place as may be designated by the said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States fifty years after the date of their issue. Said Territory reserves the right to redeem at par any of said bonds, in their numerical order, at any time after twenty years after the date thereof.

"They shall bear the date of their issue, state when, where, and to whom payable, rate of interest, and when and where payable, and shall be signed by said loan commissioners, and countersigned by the Territorial treasurer, and bear his official seal, and shall be registered by the Territorial auditor in a book to be kept by him for the purpose, which shall state amount sold for, or, if exchanged, for what; and the faith and credit of the Territory is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

"Par. 2042 (Sec. 4). Coupons for the interest shall be attached to each bond, so that they may be removed without injury to or mutilation of bond.

"They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the Territorial treasurer.

"The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

"Par. 2043 (Sec. 5). Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this Territory, they shall direct the Territorial treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the Territory, and at least one insertion in a newspaper published in the city of New York, in the State of New York, and in the city of San Francisco, in the State of California; such notice shall specify the amount of bonds to be sold, the place, day and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication; and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof to the bidder or bidders therefor bidding the lowest rate of interest: Provided, That said loan commissioners shall have the right to reject any and all bids: And Provided Further, That they may refuse to make any award unless sufficient security shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

"Par. 2044 (Sec. 6). When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in this act provided, and any expense incurred by

them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said Territory, upon the order of the Territorial auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

"They shall from time to time, after signing said bonds, deliver them to the Territorial treasurer, taking his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds delivered to him by the said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the Territory and recorded by him in a book to be kept for that purpose. And the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

"Par. 2045 (Sec. 7). The Territorial treasurer shall sell said bonds for cash or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

"That said treasurer shall endorse, by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

"Par. 2046 (Sec. 8). Moneys received by said treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of Territorial warrants of his readiness to redeem such indebtedness due and outstanding shall cease.

"Before any such indebtedness shall be paid the Territorial auditor shall indorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

"Par. 2047 (Sec. 9). There shall be levied annually upon the taxable property in this Territory, and in addition to the levy for other authorized taxes a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this act to be placed in the Territorial treasury in the fund to be known as the 'Interest Fund.' And fifty years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent of the total amount issued until all the bonds issued under the provisions of this act are paid and discharged; nothing herein contained shall be construed to prevent the legislature of Arizona from creating a sinking fund during the life of said bonds for their redemption at maturity.

"The Territorial board of equalization, or, on their failure, the Territorial auditor, shall determine the rate of tax to be levied in the different counties in the Territory to carry out the provisions of this act, and shall certify the same to the 'board of supervisors' in each county and to the municipal or school authorities; and the said board of supervisors or au-

thorities are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other Territorial, county, municipal and school taxes. Every tax levied under the provisions of authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

"All moneys derived from taxes authorized by provisions of this act shall be paid into the Territorial treasury and shall be applied—

"First. To the payment of the interest on the bonds issued hereunder.

"Second. To the payment of the principal of such bonds: Provided, That all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the 'redemption fund' after all said bonds shall have been paid and discharged shall be transferred by the Territorial treasurer to the Territorial 'general fund.'

"Par. 2048 (Sec. 10). Whenever, after the expiration of the fifty years from the date of issuance of any bonds under this act there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the Territorial treasurer to advertise as in the manner of advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisement shall not be presented for payment and cancellation

at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the Territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The Territorial auditor shall keep a record of all bonds issued and disposed of by the Territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for redemption, the date, amount due thereon, and person surrendering.

"The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the Territory their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness, upon the official demand of said authorities, in the same manner as other Territorial indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law to said county, municipality or school district, upon official demand by said authorities; the county, municipality or school district to pay into the Territorial treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the Territorial board

of equalization, or on their failure by the Territorial auditor to be levied for the payment of the principal of the bonds issued in redemption, refunding or other bonds issued to such county, municipality or school district when the same shall become due and in addition a rate of interest paid by the Territory on such bonds.

"Par. 2049 (Sec. 11). When the treasurer pays or redeems any indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words 'redeemed and cancelled,' with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under the act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or to the governor, or a committee of either branch of the legislature, or a joint committee of both.

"Par. 2050 (Sec. 12). It shall be the duty of the Territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the Territorial auditor shall first draw his warrant on the Territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

"Par. 2051 (Sec. 13). It shall be the duty of said loan commissioners to make a full report of all their proceedings had under the provisions of this



act to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the Territorial legislative assembly.

"Par. 2052 (Sec. 14). No bond issued under the provisions of this act shall be taxed within this Territory.

"Sec. 15. That nothing in this act shall be construed to authorize any future increase of any indebtedness in excess of the limit prescribed by the 'Harrison act': Provided, however, That the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on Territorial, county, municipal and school government for the year ending December thirty-first, eighteen hundred and ninety, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison act.'

"That all acts or parts of acts in conflict with this act are hereby repealed."

Approved June 25, 1890.

## III.

## TERRITORIAL FUNDING ACT OF ARIZONA,

APPROVED MARCH 19, 1891.

AN ACT TO PROVIDE FOR FUNDING TERRITORIAL, COUNTY AND OTHER INDEBTEDNESS AND BEING SUPPLEMENTAL TO THE ACT OF CONGRESS ENTITLED "AN ACT APPROVING WITH AMENDMENTS THE FUNDING ACT OF ARIZONA," APPROVED JUNE 25, 1890.

[Laws Territory of Arizona, 1891, p. 120.]

Be it enacted by the Legislative Assembly of the Territory of Arizona.

Section 1. That the act of congress entitled "An Act Approving with Amendments the Funding Act of Arizona," approved June 25th, 1890, be, and the same is hereby, now re-enacted as of the date of its approval, subject to the modifications and additional provisions hereinafter set out, and to carry out the purpose and intention of said act of congress, the loan commissioners of the Territory of Arizona shall provide for the liquidation, funding and payment of the indebtedness existing and outstanding on the 31st day of December, 1890, of the Territory, the counties, municipalities and school districts within said Territory, by the issuance of bonds of said Territory, as authorized by said act, and all bonds issued under the provisions of this act and the interest thereon shall be payable in gold coin of the United States.

Sec. 2. Whenever the said loan commissioners

shall redeem, refund or pay any indebtedness of a county, municipality or school district, or issue bonds to such county, municipality or school district as authorized by said act of congress, the Territorial treasurer shall open and keep an account with said county, municipality or school district, and shall at once make out and transmit to the proper officer or officers charged with the administration of the affairs of said county, municipality or school district, a statement under his official seal, showing the amount and character of the indebtedness of said county, municipality or school district, refunded or paid, the amount of bonds issued therefor, when due and payable, rate of interest and amount of interest that will be required to be paid annually thereon. And said officer or officers shall file said statement in the proper office as a record therein.

Sec. 3. In all cases of funding and paying the indebtedness of any county or school district in such county, the board of supervisors of such county, or, of funding and paying the indebtedness of any municipality, the executive or other proper officer or officers of such municipality, shall annually, at the time of assessing and levying taxes therein, cause to be assessed and levied each year upon the taxable property of the county in case of county indebtedness, municipality in case of municipal indebtedness, and school district in case of school district indebtedness, and in addition to other authorized taxes, a sufficient sum to pay the interest on the bonds issued and disposed of under the provisions of this act, for the benefit of such county, municipality or school district respectively. And fifty (50) years after such bonds shall have been issued, such additional amount shall be levied, annually, as will pay ten per cent of the total amount issued until all the bonds issued

under the provisions of this act are paid. And all taxes shall be assessed, levied and collected as other county, municipal and school district taxes are collected, and shall be paid into the Territorial treasury.

Sec. 4. If sufficient money shall not be realized each year from the collection of taxes to pay the interest on said bonds when due, the deficiency shall be paid out of the money, fund or funds, used for defraying the general expenses of such county, municipality or school district, for the funding, redemption and payment of whose indebtedness said bonds were issued, which said deficiency shall be paid by the proper officer or officers in charge of said money, fund or funds, upon the official demand thereof by the Territorial treasurer. All money collected in any county, municipality or school district, for the payment of said interest remaining after such payment, shall be paid into said fund or funds used for the general expenses of such county, municipality or school district.

Sec. 5. It shall be the duty of the respective county, municipality and school district officers, whose duty it is to levy and collect the taxes therein, to levy and collect the tax in this act provided for the payment of the principal and interest of said bonds when due and payable and to pay the same into the Territorial treasury at the time and times of the payment of the Territorial taxes. Any failure to comply with the conditions and provisions of this act by any officer or officers charged with the performance thereof, or any neglect or refusal by him or them to levy, collect or pay over such taxes as aforesaid, or to apply the money collected under this act otherwise than for the purpose for which it was collected, shall be deemed a misdemeanor, and upon conviction in a court having jurisdiction thereof, the person so con-

victed shall be fined in an amount equal to the sum that should have been levied and collected, or for any misappropriation of the moneys so collected, in an equal amount to the sum not applied as in this act provided, and imprisoned as in other cases of misdemeanor, in the discretion of the court. And if the said proper officer or officers shall fail to levy the taxes as in this act provided, he or they may be compelled to perform such duty by any court having jurisdiction thereof. Provided, that in such case of failure, the Territorial board of equalization, or, upon their failure to act, the Territorial auditor shall levy sufficient taxes in the different counties, municipalities and school districts to carry out the provisions of this act and the act of which this is supplemental. Said board and auditor, or either of them, may require the proper officer or officers of the county, municipality or school district whose indebtedness has been refunded, and it shall be their duty to furnish said board or auditor such information as will enable said board or auditor to carry out the provisions of this act and said act of congress. When the tax is so levied by the Territorial board of equalization or Territorial auditor, he or they shall transmit to the board of supervisors, in the case of the county and school district tax, and to the proper officers in case of municipal tax, or to such other officer or officers exercising like duties, a statement of the rate of taxes fixed and levied upon the property within said county, municipality or school district, for the purpose aforesaid, and the proper county, municipal and school district officers shall enter upon the tax roll and proceed to collect the tax levied, as other county, municipal and school district taxes are collected.

Sec. 6. The board of supervisors of each

county shall fix and define the boundaries of each school district within the county, and all taxable property and the increase thereof, within the limits of each county, municipality or school district, is hereby pledged to the payment of any and all bonds and the interest thereon issued for the benefit of such county, municipality or school district respectively. And in the event of the division, disincorporation or dissolution in any manner in any such county, municipality or school district, the board of supervisors of each county, or other board of officers exercising the like duties, and in case of their failure to act, then the Territorial board of equalization, and upon their failure to act the Territorial auditor or other officer exercising the like duties, shall cause the proper taxes to be assessed and levied upon the taxable property within the limits of such county, municipality or school district, at and from the time of the issuance of the bonds for its benefit, to meet the payment of such bonds and the interest thereon.

Sec. 7. Any person holding bonds, warrants or other evidences of indebtedness of the Territory or any county, municipality or school district within the Territory, existing and outstanding on the 31st day of December, 1890, may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value and the accrued interest at the time of exchange; but no indebtedness shall be redeemed at more than its face value and any interest that may be due thereon.

Sec. 8. The provisions of said act of congress relating or applying to the liquidation, refunding and redeeming of the Territorial indebtedness, sale or exchange of bonds, receiving and applying the proceeds; shall apply and be the method used for the liquidation, refunding and redeeming the payment of

the indebtedness of the counties, municipalities and school districts of this Territory authorized and contemplated by said act. And the loan commissioners shall, at no time, issue to any county, municipality or school districts any bonds created under this act or said act of congress, without requiring from the officer or officers receiving the same, a bond, as is required of the Territorial treasurer, by section 6 of said act of congress; and the said officer or officers shall give such bond, and no bonds shall be issued to any county, municipality or school district except in exchange for the bonds, warrants or other evidences of indebtedness for the redemption of which the refunding bonds were issued.

Sec. 9. Each county, municipality and school district shall pay into the Territorial treasury its pro rata of the costs and expenses incurred and paid by the Territory for the refunding, redeeming and payment of the indebtedness of said county, municipality or school district.

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved March 19, 1891.

#### IV.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That an act entitled "An Act approving, with amendments, the funding Act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and paragraph twenty hundred and fifty-two (section fifteen), of said act, be, and the same is hereby, amended by adding thereto as follows:

"Provided further, however, That the present outstanding warrants, certificates and other evidences of indebtedness issued subsequent to December thirty-first, eighteen hundred and ninety, for the necessary and current expenses of carrying on the Territorial government only, together with such warrants as may be issued for such purpose for the years ending December thirty-first, eighteen hundred and ninety-four, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison Act.'"

Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

Approved August 3, 1894.

## V.

### MEMORIAL.

*To the Senate and House of Representatives of the United States of America in Congress assembled:*

Your Memorialists, the Legislative Assembly of the Territory of Arizona, beg leave to submit to your honorable bodies; that

Whereas, Under the various acts of the legislative assembly of the Territory of Arizona, certain of the counties of the Territory were authorized to issue in aid of railroads and other quasi-public improvements, and did, under such acts, issue bonds, which said bonds were sold in open market, in most instances at their face value, and are now held at



home and abroad by persons who, in good faith, invested their money in the same, and, save and except such knowledge as the law imputes to the holder of bonds issued under authorized acts, are innocent holders of the same; and

Whereas, The validity of these bonds for many years after their issuance was questioned and acknowledged by the payment of the interest thereon as it fell due: and

Whereas, There has recently been raised a question as to whether these acts of the legislative assembly were valid under the organic law of the Territory, and which has led to a movement looking to the repudiation of the indebtedness created under and by virtue of said acts, and

Whereas, We believe that such repudiation would, under the circumstances, work great wrong and hardship to the holders of such bonds, and at the same time most seriously affect the credit and standing of our people for honesty and fair dealing, and bring us into disrepute:

Wherefore, We most strongly urge upon your most honorable bodies the propriety and justice of passing such curative and remedial legislation as will protect the holders of all bonds issued under authority of acts of the legislative assembly, the validity of which has heretofore been acknowledged, and that you so further legislate as to protect all innocent parties having entered into contracts resulting from inducements offered by our Territorial legislation, and relieve the people of the Territory from the disastrous effects that must necessarily follow any repudiation of good faith on the part of the Territory; and that you may so further legislate as to validate all acts of the legislative assembly of the Territory which have held out inducements for the

investment of capital within the Territory, and which have led to the investment of large sums of money in enterprises directly contributing to the development and growth of the Territory, and thus relieve the honest people of the Territory from the disastrous effects that must necessarily follow any violation of good faith on the part of our people.

Resolved, That our delegate to congress be, and he is hereby, instructed to use all honorable means to bring this subject to the earnest consideration of congress; that the secretary of the Territory be, and he is hereby requested to transmit a copy of the foregoing Memorial to each house of congress, and to our delegate in congress.

J. H. CARPENTER,

Speaker of the House.

A. J. DORAN,

President of the Council.



# Supreme Court of the United States.

No. 151.—OCTOBER TERM, 1901.

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| George Schuerman, D. E. Dumas<br>and J. R. Beaton, Appellants,<br><i>vs.</i><br>The Territory of Arizona. | } | Appeal from the Supreme Court of<br>the Territory of Arizona. |
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[March 3, 1902.]

This is an appeal by the defendants below from a judgment of the Supreme Court of the Territory of Arizona affirming a judgment of the district court granting a mandamus. Upon the trial of the case certain facts were agreed upon, in substance, that the defendants were the supervisors of the county of Yavapai, and that prior to the year 1890 the county of Yavapai had issued what were known as railroad bonds in aid of the Prescott and Arizona Central Railroad Company, upon which there was due on the 17th of September, 1897, \$260,218.80, and on that day they were received in exchange by the board of loan commissioners, who thereupon issued 258 funding bonds of the Territory, each of the denomination of one thousand dollars, and bearing interest at the rate of five per centum per annum, payable semi-annually. On the 18th of November, 1896, the board of supervisors of defendant county requested the board of loan commissioners to fund the bonds issued for the aid of the railroad company, but the board subsequently and on December 5, 1896, rescinded such request before it had been acted upon, and on the 17th of September, 1897, the holders of the bonds requested the board of loan commissioners to refund the same, which they did upon such demand. The statement of facts then continues as follows:

"5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

"6. On January 15, 1898, there became due and payable as interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai County as aforesaid, the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th days of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

"7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona has

paid all the interest thereon at the times when the same became due and payable, amounting in all at the date hereof to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

"9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai County for the funding of said P. & A. C. Railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

"10. For the year 1899 the territorial board of equalization of said Territory, at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai County, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai County, that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars, but only levied the sum of six cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. Railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

"11. The above mentioned P. & A. C. Railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central Railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building and owning said railroad."

The county having refused to levy any taxes for the purpose of collecting money to pay any of the interest maturing on the bonds of the Territory given in exchange for the bonds issued by the county, this proceeding was undertaken to compel the board of supervisors to levy a tax in accordance with the provisions of the statute, for the purpose of paying the interest which had been paid by the Territory on the bonds.

Mr. Justice PECKHAM, after stating the above facts, delivered the opinion of the Court.

It is claimed on the part of the defendants below that the railroad bonds for which the territorial bonds were given were invalid when issued, and it is only by reason of the passage of the act of June 6, 1896, (29 Stat. 262,) that any action could be sustained to enforce their payment. That act has been held to be within the power of Congress to pass, and that by it the bonds therein described were made valid. (*Utter v. Franklin*, 172 U. S. 416.)

Three grounds are now urged why the judgments of the lower courts should be reversed. They are:

(1) That the railroad bonds were illegally funded, without any demand having been made by the board of supervisors of Yavapai County upon the territorial loan commission for such funding.

(2) That said bonds were funded after January 1, 1897, and at a time when the board of loan commissioners were by the terms of the statute without power to fund them.

(3) That the bonds were improperly and illegally funded at a meeting of the board of loan commissioners of the Territory of Arizona, at which only two members of the said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such funding.

(1.) In regard to the first ground, the Supreme Court of the Territory has held that it was not necessary that a demand should be made by the municipal authorities, but that the holders of the bonds could themselves make it by virtue of section 7 of the territorial funding act of Arizona, approved March 19, 1891. The seventh section of that act reads as follows:

"SEC. 7. Any person holding bonds, warrants or other evidence of indebtedness of the Territory, or any county, municipality or school district within the Territory, existing and outstanding on the 31st day of December, 1890, may exchange the same for the bonds issued under the provisions of this act at not less than their face or par value, and the accrued interest at the time of exchange; but no indebtedness shall be redeemed at more than its face value and any interest that may be due thereon."

Where a holder of bonds had made the demand it was held sufficient under that section. (*Braven v. Mayor*, 56 Pacific Rep. 719; *Yavapai County v. McCord*, 59 Id. 99.)

This construction of the territorial act by the Supreme Court of Arizona we think was correct, and that it was not necessary in order to obtain a refunding of the bonds that the demand for the same must be made by the municipal authorities.

(2.) It appears from the records that the bonds were funded after January 1, 1897, and it is objected that there was no power on the part of the board of loan commissioners to fund such bonds after that date.

The act of Congress under which this question arises was approved June 6, 1896, (29 Stat. 262, chap. 339,) and is set forth in the margin.\*

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\*Chap. 339. An act amending and extending the provisions of an act of Congress entitled "An act approving with amendments the funding act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplemental thereto approved August third, eighteen hundred and ninety-four.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the acts of Congress approved June twenty-fifth, eighteen hundred and ninety, and August third, eigh-*

The Supreme Court of Arizona has decided this contention against the defendants upon the authority of its previous decisions in *Gage v. McCord*, (51 Pacific Rep. 977, decided in 1898,) which was approved in *Yavapai County v. McCord*, (59 Id. 99, decided in November, 1899.) In the first mentioned case the following is that portion of the opinion which discusses this particular objection :

"Stress is put upon the clause 'until January first, eighteen hundred and ninety-seven,' found in section 1 of the act, as bearing out the view that the purpose and intent of Congress was to limit the time within which the loan commissioners might act, and to require the completion of the work of funding, by the sale and disposition of bonds and the liquidation of the indebtedness allowed by this and prior acts to be funded, by January 1, 1897. Even were we restricted to the more literal meaning of the words used in construing remedial statutes of this kind, the narrow and circumscribed view thus taken of the statute can hardly be justified if regard be had to the whole of the statute, including the plain purpose of the act as expressed in its title. In the latter, it is clearly stated to be an amendment of previous statutes, and the extension and

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teen hundred and ninety-four, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory, and the counties, municipalities and school districts thereof, as provided in the act of Congress approved June twenty-fifth, eighteen hundred and ninety, until January first, eighteen hundred and ninety-seven, and all outstanding bonds, warrants and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enactments of said Territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June twenty-fifth, eighteen hundred and ninety, and which said bonds, warrants and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the acts of the legislature by which they were authorized, shall be funded, with the interest thereon, which has accrued and may accrue until funded into the lower interest bearing bonds, as provided by this act.

SEC. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commission of Arizona under the provisions of the act of Congress approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplemental thereto approved August third, eighteen hundred and ninety-four, are hereby declared to be valid and legal for the purposes for which they were issued and funded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legislature of said Territory, as hereinbefore authorized to be funded, are hereby confirmed, approved and validated, and may be funded, as in this act provided, until January first, eighteen hundred and ninety-seven: *Provided*, That nothing in this act shall be so construed as to make the government of the United States liable or responsible for the payment of any of said bonds, warrants or other evidences of indebtedness by this act approved, confirmed and made valid, and authorized to be funded.

Approved, June 6, 1896.

enlargement of their provisions. Again, an analysis of the body of the act bears out the view that, instead of the purpose being to limit or restrict the exercise of any powers, rights or privileges previously granted, the legislative will was to add to, extend and enlarge these. The first section contains two general provisions—one authorizing the amendment and extension of the Congressional acts approved, respectively, June 25, 1890, and August 3, 1894, so as to include in their provisions 'all outstanding obligations' of the Territory; the other directing the funding of all outstanding bonds, warrants and other evidences of indebtedness of the Territory, as well as of the counties, municipalities and school districts thereof, which had been authorized by legislative enactments, and which bore a higher rate of interest than is authorized by the funding law, and which had been sold or exchanged in good faith. The second section likewise has reference to two classes of indebtedness, both of which are recognized obviously so as to confirm, approve, validate and effectually fix their status as binding obligations upon the Territory.

"The acts of June 25, 1890, and August 3, 1894, being referred to, we must therefore consider the act of June 6, 1896, *in pari materia* with the former. The former act confirmed and approved, with amendments, chapter 1, tit. 31, Rev. Stat., passed by the territorial legislature March 10, 1887. These amendments had reference to the rate of interest, the time bonds issued for funding purposes should run, and as to what indebtedness might be funded; the act being amended in this particular to include county, municipal and school indebtedness. Congress added to the legislative enactment a provision that in effect validated a class of obligations otherwise invalid, because incurred in violation of the organic law of the Territory, as found in the 'Harrison Act,' and provided for the funding of all the then existing and outstanding indebtedness, and that which might thereafter be evidenced by warrants issued for the necessary and current expenses of carrying on territorial, county, municipal and school government for the year ending December 31, 1890, and added to the foregoing the declaration that thereafter no warrants, certificates or other evidences of indebtedness should be allowed to issue or be legal when the same is in excess of the limit prescribed by the Harrison Act. The act of August 3, 1894, provided 'that an act entitled "An act approving, with amendments, the funding act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and paragraph twenty-two hundred and fifty-two (section 15) of said act, be and the same is hereby amended by adding thereto as follows: "Provided, further, however, that the present outstanding warrants, certificates and other evidences of indebtedness issued subsequent to December thirty-first, eighteen hundred and ninety, for the necessary and current expenses of carrying on the territorial government only, together with such warrants as may be issued for such purpose for the years ending December thirty-first, eighteen hundred and ninety-four, and December thirty-first, eighteen hundred and ninety-five, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue, or to be legal where the same is in excess of the limit prescribed by the Harrison Act.'" It is to be noted that, in both the acts referred to, the only limitation imposed had reference to the class of obligations which were permitted to be funded, and did not in any manner restrict the territorial officers in the method of



their procedure previously prescribed by the territorial law, or limit the time within which the acts of funding, by the sale and disposition of bonds, might lawfully be done. Bearing in mind the remedial character of this legislation, and reading the act of June 6, 1896, in the light of the previous Congressional enactment upon the same subject-matter, we construe the former act to express only what obviously appears to be the Congressional intent, viz., to extend and enlarge the class of obligations which may be funded, and not to limit the time within which the board of loan commissioners might complete the acts of funding indebtedness, which has expressly been recognized by Congress as fundable. We therefore read section 1 of this act as authorizing the funding of all obligations of the Territory which existed and were outstanding prior to January 1, 1897, and not as limiting the sale and disposition of bonds for funding purposes by the loan commissioners to the absurdly short period of six months for the successful accomplishment of the funding of the varied class of obligations validated and recognized by the act as fundable, and which necessarily amounted to large sums. It is not to be assumed that Congress would in one breath grant liberal and generous concessions, and in the next breath take away their practical benefits by the imposition of a seemingly unreasonable and unnecessary restriction, and thus defeat its own purpose and intent. It is to be noted that no contention is made that any of the indebtedness proposed to be funded by the sale and disposition of the bonds in question has been incurred since January 1, 1897, but the sole contention is as to the time within which the funding of the territorial indebtedness as limited by law may be done."

We are disposed to agree with the conclusions arrived at by the territorial Supreme Court. While it may be said that by the strict letter of the statute of 1896 there could be no funding of a bond after January 1, 1897, although the bond had been issued long prior to that date and represented an indebtedness of the county, which was provided for by the act of 1896, yet taking into consideration the series of acts which have been passed and the provisions made therein relating to the funding of the indebtedness of the Territory and of the various counties and other municipal divisions therein, we think the intent of Congress was to provide that there should be no funding of bonds or other indebtedness which arose subsequently to January 1, 1897, the date named in the statute, and that date was named as the limit of the indebtedness that could be refunded, and the statute was not intended to limit the mere process of exchanging one bond for the other to the time specified. There was no special reason for a limitation of time for the mechanical exchange of bonds under the statute, so long as the time was limited which applied to the indebtedness to be recognized.

Although bonds executed by many counties in favor of railroads had been held invalid because the acts of the legislature of Arizona permitting the counties to issue such bonds were violations of the restrictions imposed upon the territorial legislature by Congress, (*Lewis v. Pima County*, 155 U. S. 54,) yet the legislative assembly of the Territory of Arizona had adopted a memorial asking Congress to pass such curative

legislation in regard to such bonds as would protect the bondholders, when such bonds had been issued under the authority of the acts of the territorial legislature. A copy of the memorial is to be found in the report of the case of *Utter v. Franklin*, (174 U. S. 416, 421.)

It was, therefore, the desire of the Territory of Arizona to have the bonds validated, and that they should be paid and to pay them. We think it quite plain that the second section of the Federal statute of June 6, 1896, was passed in response to the request of the legislature of Arizona. When these bonds were validated by such statute it would seem hardly reasonable that the short period of six months from June 6, 1896, to January 1, 1897, should be given not alone for their presentation and exchange, but also for all the indebtedness mentioned in that act; while, on the contrary, having made all such bonds valid, it would seem to be quite reasonable that the limitation of time provided for in the Federal act referred to the character of indebtedness which was to be limited and not to the particular time when the bonds were actually to be exchanged.

It is to be noted that by the acts prior to that of June 6, 1896, there was no limit whatever placed upon the time for the board of loan commissioners to act upon the funding of the indebtedness of the Territory, but the limitation was in regard to the time when the debts which were to be refunded were created. The only limit named in the act of Congress of June 25, 1890, (chap. 614, 26 Stat. 175,) was as to the date when the indebtedness was created. Section 7 of the territorial act of March 19, 1891, it will be perceived, did not limit the date of refunding, but did limit the indebtedness to that which was existing or outstanding on December 31, 1890. By the act of Congress approved August 3, 1894, (chap. 200, 28 Stat. 225,) the time for the creation of debts of the Territory which might be funded was extended from December 1, 1890, to December 31, 1895, which was over a year beyond the date of the passage of the act, but the time of refunding was not limited.

In none of these acts, as stated, was there any limitation as to the time of refunding, but the limitation in each was in regard to the indebtedness which was to be refunded. Upon consideration of all the circumstances existing when the various acts of Congress were passed, we are inclined to concur with the Supreme Court of Arizona on the construction it has placed upon the act of Congress of 1896. While we admit that it is against the strict letter of the statute, we think the construction adopted is within its clear meaning and intention.

(3.) The last objection raised to the validity of the funding is that the bonds were improperly and illegally funded at a meeting of the board of loan commissioners of the Territory of Arizona, at which only two members of the board were present, the third member being absent from the Territory, and not in any manner consulted with reference to the funding.

There is a statute of Arizona (Revised Statutes, par. 2932, subdivision 2) which reads as follows: "All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

The objection is made that the loan commissioners of Arizona obtained their authority from the act of Congress and not from the territorial legislature, and hence the statute above referred to does not apply. The Territory of Arizona passed an act in 1887 known as the Revised Statutes, in which was "Title XXXI, Funding." That act, by paragraph 2039, created the governor of the Territory, together with the territorial auditor and the territorial secretary, and their successors in office, a board of commissioners to be styled the "Loan Commissioners of the Territory of Arizona," who should have and exercise the powers and perform the duties provided for in the act, which gave them power to provide for the payment of the existing territorial indebtedness and such future indebtedness as might be authorized by law, and granted them power to issue negotiable coupon bonds of the Territory under the conditions named in the act. This act was somewhat amended and then approved by Congress June 25, 1890, (26 Stat. 175.) The powers of the commissioners have been extended from time to time. It is claimed that the power vested in them came from Congress instead of the territorial legislature and that therefore the statute relating to the exercise of powers given to a board of public officers does not apply.

We think that the territorial statute, although approved by Congress, is the foundation for the appointment of the loan commissioners, and that the body thus created comes directly within the provisions of the Arizona statute just referred to. Upon this subject it was said by the Supreme Court of Arizona as follows:

"There is no provision in the funding act of 1887, as amended by Congress in 1890, that the commissioners should jointly act, but the board was treated as a unit. The funding act is not a strictly Congressional act; it is a territorial act, passed by the legislature of the Territory and embodied in the Revised Statutes of 1887. For the purpose of assuring the validity of the act, and of placing any issuance of bonds under it beyond dispute, the act was presented to Congress for its affirmative approval, which it gave with some few amendments, generally verbal in their nature and evidently for the purpose of making the act more specific. The title of the act passed by Congress clearly carries out that view, for the first provision of that act is 'that the act of the Revised Statutes of Arizona of 1887, known as title XXXI, "funding," be and is hereby amended so as to read as follows: and that as amended the same is hereby approved and confirmed, subject to future territorial legislation.' The act being a territorial act, and the commission being the creation of the Territory, is directly affected by par. 2932, *supra*."

The record does not show that the absent commissioner had not been notified to attend the meeting at which the bonds were funded. It is not to be presumed that notice of the intended meeting was not given. Under the provisions of the territorial act, the proceedings of the board of loan commissioners were legal.

We think the three objections made by the appellants are untenable, and the judgment of the Supreme Court of Arizona was right, and must be

*Affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*